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Senate Reform: The Prospect For Change

By

Walter A. Olinyk ©

A thesis submitted to the Faculty of Graduate Studies and Research in partial
fulfillment of the requirements for the degree of Masters of Arts

Department of Political Science

Edmonton, Alberta
Spring 1993

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Abstract

Throughout Canada's political development, many Canadians have expressed their disenchantment with Canada's national government. Of those disgruntled Canadians, many have argued that the primary deficiency in our system of national governance is the absence of meaningful and responsive provincial representation in Ottawa. One corrective measure that such individuals have suggested is the reform of the Canadian Senate. Although this demand, or demands similar to it in nature, have existed since the early years after Confederation, no significant Senate reform proposal was ever agreed to by Canada's First Ministers until the signing of the Charlottetown accord in August 1992. Thus, an examination of the Charlottetown round of constitutional negotiations offers an opportunity to identify what necessary requirements must exist for agreement to be reached on the Senate reform issue.

Even though there has been a widespread demand for Senate reform, especially in the last two decades, there has been no consensus on what was an acceptable reform for Canada's Senate. This lack of consensus has resulted from the competition of highly entrenched, regionally based definitions of Canadian federalism which constitutes the primary factor in Canada's constitutional reform process. However, additional factors emerged in the latest round of constitutional negotiations that encouraged the participants in this process to compromise on their guiding definitions of Canadian federalism and agree to the constitutional package contained in the Charlottetown accord. Therefore, the primary focus in this thesis will be to examine how the salient factors in Canada's constitutional reform process have interacted to determine the process and prospect of Senate reform in Canada. In the concluding chapter it is suggested that the referendum on the Charlottetown accord has created new political conditions which will make any substantial reform of Canada's Senate difficult, if not impossible, in the near future.

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Chapter 1

A Consequence of Design

As Canada celebrates its 125th anniversary, Canadian society has evolved into an even more diverse composition of peoples, cultures and languages than it was at our nation's conception. At the time of Confederation, the cultural, linguistic, religious, economic, and political diversity of Canada's founding members encouraged the adoption of a system of governance which would guarantee both the representation and protection of those distinct elements that constituted Canada's new national society. As a consequence of this diversity of interests represented by the original members of Confederation, it was agreed that if there were to be political union the structure of government in Canada must be federal in nature. In reviewing the extensive analysis on the Confederation settlement, it is apparent that there is significant consensus that the architects of Canadian Confederation were acutely aware that the successful union of the two Canada's and the Maritime provinces depended upon the acceptance and implementation of the federal principle in the new nation.[1] Although there is agreement on this above point, there has been and continues to be conflicting opinions on what the founders intended for the form and function of the federal principle in the new nation.

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[1] For instance, Kenneth McNaught writes that among the architects of Confederation "there was a conviction that survival, with its connotations of regional cultural differences, could be ensured only by federation." McNaught, Kenneth. (1970) *The History of Canada.* London: Heinmann Educational Books, p. 137. Others who have expressed this conclusion are: Careless, J.M.S. (1970) *Canada: A Story of Challenge.*

Taking a moment to look into this debate, the most straightforward statement of the intentions of Canada's founders is the Confederation settlement as represented in the *Constitution Act, 1867*. The variety of interests in Canadian society were to be accommodated and channeled through two distinct mechanisms. The first was an explicit division of constitutional jurisdiction between the federal and provincial governments. This division of powers limited the authority of the provinces to those areas of jurisdiction primarily related to the protection of their cultural and local distinctiveness. In addition to this, as Richard Simeon and Ian Robinson note, the federal government's residual power of "Peace, Order and good Government" contained in the division of powers, combined with the federal government's power, via the Governor-General, of "disallowance" and "reservation" in sections 55 and 90 have been taken to suggest that the founders subscribed to a quasi-federal model where the provincial governments were to be subordinate to a dominant central authority.[2] Robert Mackay suggests that our founders, acutely sensitive to the experiences of the American civil war, adopted a quasi-federal model for Canada because they feared that the classical or American federal model could not mitigate the centrifugal tendencies in our new nation. According to Mackay, these "tendencies were fostered by nature [i.e. race, religion, language and geography] to a much greater extent than they had ever been in the United States."[3] The design of Canada's unique federal system, featuring a powerful central government founded upon the practice of responsible parliamentary government, was

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3rd ed. Toronto: Macmillan of Canada; Creighton, Donald. (1971) *The Story of Canada*. Toronto: Macmillian of Canada; and, Smith, Peter J. (1990) "The Dream of Political Union: Loyalism, Toryism and The Federal Idea in Pre-Confederation Canada." In Martin, Ged. ed. (1990) *The Causes of Canadian Federation*. Fredericton: Acadiensis Press.

[2] Simeon, Richard and Ian Robinson. (1991) *State, Society, and the Development of Canadian Federalism*. Toronto: University of Toronto Press, p. 24.

[3] Mackay, Robert A. (1963) *The Unreformed Senate of Canada*. Toronto: McLelland and Stewart Limited, p. 35.

selected as the best prohibitive measure against the centrifugal forces believed to be present at Confederation. However, as Mackay notes, "while a strong government seemed necessary to secure a permanent union, the exigency of the moment demanded that sectional fears be allayed by providing strong safeguards for provincial and sectional interests."[4]

It was in response to those existing sectional fears that Canada's founders adopted a bicameral legislative structure as the second mechanism of accommodation. Unlike bicameralism in unitary democracies with parliamentary governments, bicameralism in federal parliamentary democracies, such as Canada, performs two specific functions. The first function that was originally intended for the Canadian Senate, as modeled after the House of Lords in England, was to counterbalance the majoritarian impulse of the lower house by providing for the representation of the landed classes in government (as demonstrated by the property requirement specified in the *Constitution Act, 1867*), in addition to religious and ethnic minorities[5] . Over time, the Senate's role as a counterbalance to the House of Commons shifted from the protection of property and religious and ethnic minorities, to a chamber of sober second thought by providing for the careful deliberation of the legislation emanating from lower house. The Canadian Senate's second function, like its American counterpart, was to provide an institutional outlet in the national legislative process for the political representation of the regional units. Therefore, as Mackay suggests, the less populous provinces, sensitive to the unequal distribution of population at the time of Confederation, demanded the adoption of a bicameral legislative system in hopes of ensuring some measure of protection from responsible parliamentary government.[6] Thus, Canada's founding members agreed to equal regional representation in the Senate where Ontario, Québec and the Maritime provinces would hold twenty-four seats each.

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[4] Mackay, (1963) p. 36.

[5] See Mackay,(1963) p. 47 and Kunz, F.A.. (1967) *The Modern Senate of Canada, 1925-1963: A Re-Appraisal.* Toronto: University of Toronto Press.

[6] Specifically, since the government of the day is only responsible to the majority of legislative members in the House, the less populous provinces feared that their interests would be subordinated to the interests of the larger provinces who received a majority of the House of Commons seats in virtue of representation by population. See Mackay, (1963) pp. 36-38.

The practice of responsible parliamentary government, however, requires that the governing party demonstrate the confidence of the House of Commons. In this context, confidence in the government of the day depends on the Cabinet's ability to control the majority of House of Commons members in order to realize its legislative agenda. Thus, the inclusion of a politically legitimate upper chamber that could challenge the Cabinet's policy making dominance meant the creation of a political body that would severely weaken, if not cripple, the national government through institutional deadlock. Therefore, despite the Senate's impressive list of formal powers and guarantee of regional representation, "it is clear that the Fathers of Confederation did not expect that the Senate would be the chief line of defense of provincial or sectional rights. The first great check on the central government would be in the federal nature of the Cabinet."[7] In this respect, Peter Aucoin writes that the Senate "was little more than a token recognition of the federalist principle in the design of the national government, since the Senate was to be appointed by the Crown, in fact by the prime minister, on the basis of party."[8] The Senate selection by political appointment, if not explicitly preventing the Senate from acting as a political check on the central government, eventually denied the Senate the political legitimacy to carry out such a role. Consequently, the Senate's lack of political legitimacy lessened its potential for creating the institutional deadlock that would have reduced the federal government's effectiveness in mitigating the centrifugal elements that our founders viewed as existing in the proposed union.

Although the architects of Confederation intended to foster national unity by designing a federal system biased in favor of the central government, an unfortunate consequence of this design was that it cultivated a growing sense of regional alienation in Canada's emerging peripheries. Even today, this sense of regional alienation continues to undermine the country's sense of national unity. Principally, this system's political and constitutionally entrenched mechanisms for provincial accommodation and participation in national decision-making were designed in a way that limited their effectiveness in providing these functions. Our nation's founders certainly intended to foster regional and provincial participation in the new national government. However, the founders' fear for the political survival of the new nation led to the genesis of a centralized quasi-federal system with the unintentional consequence of periodically excluding regions and provinces from participating in national government. The inability to provide for continuous and effective regional and provincial participation, resulting from the Senate's political impotency and Central Canada's numerical domination of the federal Cabinet, has caused a legitimacy crisis for the federal system in Canada's peripheries. This sense of regional and provincial exclusion from national decision-making has been evident from the first decades following Confederation and, in turn, its alleviation has been one of the primary objectives of reform in Canada.

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[7] Mackay, (1963) p. 44.

[8] Aucoin, Peter. (1985) *Party Government and Regional Representation in Canada.* Toronto: University of Toronto Press, p. 139.

The Demand For Reform

As noted above, the legitimacy crisis that our federal system faces, particularly in the peripheries, was clearly an unintended and undesired consequence. As Aucoin writes, "[i]n the original design of Canada's institutions of national government, the founding fathers sought to ensure that regional interests would be represented at the centre of political decision-making but accommodated within the confines of party government."[9] The national legitimacy of our central government depended on the federal Cabinet and governing caucus to reflect Canadian society physically, thereby ensuring for the inclusive participation in central decision-making of the nation's regional, cultural and linguistic interests. Inherent in this practice of government is the potential for the exclusion of the salient societal interests from the exercise of power, which many believe has happened in Canada's case. Such individuals point to instances such as the successive Liberal governments under Trudeau and argue that important regional, provincial and societal interests were excluded from national decision-making. Moreover, these individuals argue that the process of party government in Ottawa is not a credible institutional outlet for the adequate representation and expression of regional and provincial interests in the process of national government. Consequently, as Roger Gibbins succinctly stated, there exists in many regions and provinces of the country "the belief that the existing parliamentary institutions were incapable of giving adequate expression to the federal character of Canada, that the combination of an appointed and unequal Senate, a first-past-the-post electoral system, and rigid party discipline in the House of Commons meant that regional interests were denied adequate articulation and defence."[10] This view of the national decision-making process was present in early decades after Confederation and has, throughout Canada's political evolution, gained wider acceptance culminating in the demand for the significant reform of Canada's national system of decision-making. In this respect, reform proposals have either centered on improving the process of party government (i.e. reforming the electoral process and lessening party discipline) or changing the constitutional structure of Canada's federal system. While both areas deserve attention, what follows only deals with proposals to reforming Canada's constitutional structure.

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[9] Aucoin, (1985) p. 137.

Constitutional Reform: The Intrastate and Interstate Dimensions

Generally speaking, individuals who want to reform Canada's federal Constitution have proposed reforms that promote either intrastate or interstate federalism. Proposals to reform intrastate federalism focus on altering, at the very least, the composition of the central institutions so as to enhance regional and/or provincial participation in the national government.

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[10] Gibbins, Roger. (1989) "Senate Reform: Always the Bridesmaid, Never the Bride." In Watts, Ronald L. and Douglas M. Brown. eds. *Canada: The State of the Federation*. Queen's University Institute of Intergovernmental Relations, p. 195.

The most prominent and widely discussed intrastate reform has been the proposal for Senate reform. Proposals to reform interstate federalism, on the other hand, emphasize the redistribution of jurisdiction and financial resources through either constitutional amendment or the creation of or facilitation of already existing intergovernmental consultative mechanisms. In Canada, such reform proposals include the decentralization of formal powers and the constitutionalization of intergovernmental consultations.

Throughout Canada's history, however, there has not been any significant intrastate reform as a means of addressing regional or provincial aspirations in national politics. This situation has undoubtedly contributed to the development of interstate features to accommodate regional (or more correctly, provincial) participation in national decision-making. Gibbins, in his examination of territorial politics in Canada and the United States, observes:

> . . . that the effectiveness of intrastate territorial representation in the United States has facilitated the evolutionary nationalism and centralization of the American federal system and has checked the growth of interstate federalism. In Canada, conversely, intrastate federalism has been much less effective, and as a consequence the Canadian federal system has evolved along interstate lines with concomitant decentralization and territorial fragmentation.[11]

The most conspicuous example of interstate innovation is the process of intergovernmental consultation or 'executive federalism.' This process is a means of both coordinating and legitimizing national policy through enhanced regional participation in a forum of intergovernmental negotiation and accommodation. The rise of executive federalism is linked to the expanded role of the modern state which has necessitated greater federal/provincial interaction. This, combined with the perceived lack of provincial representation and participation through existing intrastate mechanisms, has increased the importance of intergovernmental consultation, specifically the significance of First Ministers' Conferences (FMCs), and has elevated the role of provincial premiers to that of being the most legitimate provincial spokesperson in national decision-making. As Donald Smiley writes: "in the Canadian federal system territorial particularisms have come to find outlets almost exclusively through the provinces . . . largely as a result of the working of the institutions of the central government which . . . operate so as to deny provincial and regional interests an effective share in central decision-making."[12] Although this process of interstate accommodation has provided an opportunity for regional and provincial input into the national policy process, demands for intrastate reform persist.

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[11] Gibbins, Roger. (1980) *Regionalism: Territorial Politics in Canada and the United States*. Toronto: Butterworth & Co. (Canada) Ltd., p. 46.

The reason that these demands are still articulated is very much a result of the province-building efforts of the western provinces in the late 1960s and early 1970s. In reviewing the evolution of the constitutional debate after 1976, Smiley in collaboration with Ronald Watts write, that "(t)he new emphasis . . . on proposals for reforming the institutions of the central government can be in large part attributed to the growing assertiveness of the western provinces and their desire to make their political power in national affairs commensurate with their economic power."[13] Although the growth of FMCs did provide the provinces with greater political influence in the national arena, advocates for intrastate reform argue that these interstate mechanisms fail to ensure sufficient regional access or defence in national decision-making as demonstrated by the intense intergovernmental conflict of the late 1970s and the early 1980s. According to David Elton, F. C. Englemann, and Peter McCormick, "(t)he major problem with federal-provincial conferences as they are, is that they provide a forum for the articulation of grievances but do not provide for the resolution of conflict."[14]

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[12] Smiley, Donald V. (1971) "The Structural Problems of Canadian Federalism." *Canadian Public Administration.* Vol. 14, no. 3: p. 328.

[13] Smiley, Donald V. and Ronald Watts. (1985) *Intrastate Federalism in Canada.* Toronto: University of Toronto Press, p. 12.

[14] Elton, David, F. C. Englemann, and Peter McCormick. (1981) *Alternatives: Towards the Development of an Effective Federal System for Canada.*, Amended report. Calgary: Canada West Foundation, p. 4.

When intergovernmental accommodation and compromise fails to be achieved, intrastate reformers argue that regional and provincial interests remain vulnerable to the will of the numerically dominant regions which control, in effect, the federal government's political agenda. The evidence these reformers point to is the federal government's ability and apparent willingness to exercise unilaterally its constitutional authority even when such action impinges on the autonomy of the provinces and leads to provincial and regional protest. Intrastate reformers argue that this was the case in several areas (e.g. the Constitution, energy, etc.) during the Trudeau years, which only served to intensify regional and provincial alienation. The perceived institutional failure of the existing intrastate mechanisms and the mounting frustration over the inability of the new interstate mechanism of executive federalism to ensure the provinces a role in national decision-making combined to fuel the demand for intrastate reform.

Intrastate Reform Today: The Demand for Senate Reform

The Trudeau period of intense intergovernmental conflict over the Constitution and energy issues served to heighten the long-standing alienation perceived in Canada's peripheries. In turn, this alienation sparked a renewed demand for fundamental Constitutional reform, including reform to the Canadian Senate. Thus far, unlike other instances in Canadian history, the demand for Senate reform has not receded into the background of the political landscape. In fact, for the first time Senate reform commanded not only regional but also national attention. In the Charlottetown round of constitutional negotiations, not only was Senate reform agreed to by all eleven governments, the two territories and leaders of four aboriginal organizations, but also was crucial to reaching agreement on the more comprehensive constitutional reforms contained in the Charlottetown accord. Despite this impressive consensus, the Charlottetown Accord failed to survive the October 26th, 1992 national referendum bringing to an end the latest and most comprehensive blueprint for Senate reform since Confederation.

Accordingly, the Charlottetown round of constitutional negotiations provides an unique opportunity to examine Canada's modern Senate reform endeavor. In the past, Senate reform proposals promoted the strengthening of either the federal or the provincial governments in national decision-making. The Charlottetown Senate reform package reflects a significant compromise between these two kinds of Senate reform. The obvious explanation for the Charlottetown Senate reform package is that this agreement is a negotiated compromise. However, this does not adequately explain why the participants in this round constitutional talks were able to succeed where their predecessors had failed in earlier rounds of constitutional reform. Therefore, the overriding objective of this thesis will be to determine what were the salient factors in Canada's constitutional reform process and to examine how these factors have affected the process of Senate reform in Canada. Subsequently, it is argued that the referendum on the Charlottetown accord has created new political factors which will act as significant, if not insurmountable, obstacles to any substantial reform of Canada's Senate.

To understand how the Constitutional reform process has affected the process of Senate reform, it will be necessary to examine the more general Senate reform movement. Hence, the next chapter will explore the underlying assumptions and intent of Senate reformers by tracing the evolution of the Senate reform proposals from the "House of Provinces" conception to the present demands for the "Triple-E alternative." In order to explain the significant differences between the Charlottetown Senate reform and other Senate reform proposals, it will be necessary to outline those political factors that determined not only the content of Canada's most recent proposal for Upper Chamber reform, but also those variables which secured the agreement to realize Senate reform by all of Canada's First Ministers. This explanation will be presented in the third and fourth chapters. The final chapter examines the criticisms that were cast against the proposed Senate, and the Charlottetown accord in general, and assesses the consequences of the Charlottetown referendum for Canada's future Constitutional reform. Given that these consequences will constrain our constitutional reform process, the final chapter will conclude by speculating on how future political conditions will present significant challenges to the successful reform of the Canadian Senate.

Chapter 2

The Objectives of Senate Reform

In Canada's peripheries, many Canadians feel regionally alienated and isolated as they believe that their contribution to and participation in the national political process is of marginal significance. Unfortunately, there have been certain instances in Canada's political history that have substantiated this widespread perception in the peripheries and has exacerbated this sense of alienation from Canada's political process. The 1980 federal election is one such example. Hours before the polls closed in their provinces residents in Alberta and British Columbia were informed by Canada's major national networks that the Liberals had won a majority government regardless of the electoral results west of Ontario. To their chagrin, western Canadians were confronted with almost no elected representation in the new federal government as the Liberals failed to elect any MPs west of Winnipeg (in fact the Liberals only elected two MPs in the whole of western Canada). In turn, this lack of electoral representation caused western Canadians to argue that they would be denied any significant policy influence in national decision-making as the institutional mechanisms for the protection of regional interests, such as the Senate, were politically ineffective. Thus, proponents of Senate reform, particularly those in the west, argue that Canadian federalism is inherently flawed because of insufficient provincial representation and participation in national decision-making causing the potential for severe intergovernmental conflict. This lack of provincial participation, they conclude, has caused a legitimacy crisis for national decision-making which makes significant upper chamber reform an essential corrective measure for Canada's federal system. While it may be true that our national decision-making process does face a legitimacy crisis when provinces and regions are denied electoral representation in the federal government, it can not be convincingly argued that this is a permanent feature of the Canadian political process. Although this might have existed during Prime Minister Trudeau's last administration, it is difficult to maintain that it persisted, in any significant fashion, after the election of the Progressive Conservatives in 1984.

In the 1984 election campaign, the Progressive Conservatives rejected the Trudeau legacy of intergovernmental competition by promising Canadians "National Reconciliation." As Simeon and Robinson observe, "National Reconciliation lay at the core of the Tory's campaign message. They promised to 'bring Québec back in' to a constitutional consensus and reduce the tension and hostility between Ottawa and the Provinces."[1] The Conservatives subsequently won the national election with the largest majority in Canadian electoral history and secured representation in every province and region of the country. No longer could reform-minded individuals argue that the national government lacked representation from all parts of the country. Also, shortly after coming to power, the Conservatives began a program of "National Reconciliation" by attempting to foster greater intergovernmental harmony through the rejection of the "nation-building" legacy of its governmental predecessor. Not only did the Progressive Conservatives negotiate the Newfoundland Agreement On Offshore Resources, but also they signed the Western Accord which effectively dismantled the National Energy Program (NEP), so hated in Alberta. As Gibbins observes however, "[i]ronically, and somewhat inexplicably, the acquisition of positive policy and strong representation in the governing caucus and Cabinet was not enough to contain the resurgence of western alienation."[2]

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[1] Simeon and Robinson, (1990) p. 301.

In fact, the year after the Progressive Conservative party came to office its provincial counterpart in the Alberta government strengthened its commitment to upper chamber reform by recommending the adoption of a Triple-E Senate in Canada. Howard McConnell has succinctly expressed what has become a perceived truism in the west underlying the support for Senate reform. He wrote: "[n]o matter what political party is in power federally, there are regional issues on which a strong central Canadian majority in the lower house can dictate policy to the peripheries."[3] This alienation perceived in the peripheries has become so ingrained in the political culture of provinces like Alberta that many provincial politicians use this to mask their desire to use a newly constructed Senate to enhance the provincial government's power in relation to the federal government. The demand for Senate reform by provinces like Alberta reflects a desire to sensitize regionally the national policy-making process, but rather it is a result of a desire to increase provincial government control over national decisions. This provincial objective for Senate reform emerged out of the intergovernmental competition between federal and provincial governments and their contending views on the proper federal balance in Canada.

Visions of Canadian Federalism: Implications for Senate Reform

In post-World War II Canada, the tacit agreement by both orders of government to develop the Keynesian welfare state promoted what Smiley has called 'functional federalism.'[4] This period was marked by considerable intergovernmental coordination and cooperation and little conflict or debate over the appropriate Canadian federal balance.[5] This state of relative federal-provincial accord continued until Québec's Quiet Revolution. That revolution fundamentally altered the path of Canadian federalism. The modernization of Québec's industrial society, in turn, awakened a new Francophone political consciousness expressed by a new strain of Québec nationalism. Modern Québec nationalism is founded upon the dualist tradition which purports that Canada's genesis resulted from an agreement between two founding nations -- one French and centered in Québec and the other English and centered outside of Québec-- around which the country is still organized. From this perspective, Québec nationalists argue that the French nation, given its minority status in Canada and North America, is faced with the serious and constant threat of cultural extinction through assimilation. Therefore, Québec nationalists conclude that the only way to fight the continental pressures of assimilation is by radically altering the political and constitutional relationship of the government of Québec with the rest of Canada. The nationalists maintained that this would necessarily consist of a fundamental decentralization of federal power to the province of Québec in a number areas of federal jurisdictions. This perspective reached its peak with the election of the Parti Québécois in 1976, who did not argue for simple constitutional decentralization, but rather the legal and political (if not the economic) separation of Québec from Canada.

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[2] Gibbins, Roger. (1989) "Senate Reform: Always the Bridesmaid, Never the Bride." In Watts, Ronald L. and Douglas M. Brown. eds. *Canada: The State of the Federation.* Queen's University Institute of Intergovernmental Relations, p. 197.

[3] McConnell, Howard. (1988) "Case for a 'Triple E' Senate." *Queens Quarterly* (Vol. 95, no. 3): p. 683.

[4] Here Smiley introduces 'functional federalism' and contrasts it with 'political federalism.' The former is characterized by the development, coordination and implementation of policy through the interaction of specialized federal and

Over the next decade, Québec nationalism focused Canada's constitutional debates on securing a new federal relationship between Québec and Canada. The fixation on developing a new Québec-Canada accommodation continued until the "provincialism" of the mid-1970s as the rest of the Canadian provinces echoed Québec's demand for decentralization.

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provincial officials; whereas, the latter is a system of intergovernmental relations "between political and bureaucratic officials with jurisdiction-wide concerns." see Smiley, Donald V. (1971) "The Structural Problems of Canadian Federalism." *Canadian Public Administration.* (Vol. 14, no. 3): pp. 331-335.

[5] This was facilitated by the Duplessis government's commitment and defense of traditional Québec nationalism. Québec officials, as a result, pursued a policy of governmental isolation which in turn allowed officials in the rest of Canada to concentrate on the development and delivery of social services to their constituents.

As Peter Russell observes, "[t]he middle of the decade was a high tide mark in a province-building era of Canadian history. Virtually all of the provinces, no matter how economically dependent they were on Ottawa, began to seek expanded jurisdiction."[6] The drive for decentralization in the west, for example, was fueled by the international economic events of the time (i.e. high oil and gas prices) which created a new source of wealth and power for the respective oil producing provinces in Canada. The west perceived itself as having little political power in central Canadian decision-making and feared any federal encroachment that would rob the west of its new found prosperity. The energy producing provinces, therefore, argued for greater political decentralization and control over natural resources which they saw as vital to the protection of their economic future and continued prosperity. Consequently, those provinces driving for greater federal decentralization, in turn, justified their demands in terms of their own conception of the Canadian federal state.

The provincial vision of Canada, reflecting the compact theory of confederation, asserts that Canada was created from a compact among the provinces, and therefore continues to exist as a sum of its parts. As Garth Stevenson writes, "[t]he main substantive conclusion drawn from this view, . . . is that no change in any aspect of relations between the two levels of government, and certainly no increase in the federal government's power or responsibilities, can be made without the consent of all the provinces."[7] The other provinces argued that a new relationship between the federal government and Québec would demand a new relationship between the federal government and all of the provinces. No longer were Canada's constitutional negotiations limited to a debate between the Québec nationalist's version of dualism and the federal government's vision of pan-

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[6] Russell, Peter H. (1989) "The Politics of Frustration: The Politics of Formal Constitutional Change in Australia and Canada," in Hodgins, Bruce W., et al., *Federalism in Canada and Australia: Historical Perspectives, 1920-1988*. Peterborough: The Frost Centre For Canadian Heritage and Development, p. 72.

[7] Stevenson, Garth. (1982) *Unfulfilled Union: Canadian Federalism and National Unity*, revised edition. Toronto: Gage Publishing, p. 33.

Canadian bilingualism. They were now forced to include a debate on the proper balance and structure of the Canadian federal state. Consequently, the aggregate effect of both Québec nationalism/separatism and the provincialism in the rest of Canada was to advance a vision of a radically decentralized Canada. From a provincial perspective, the federal balance would necessarily slide towards significant decentralization, as the provinces would acquire the legislative jurisdiction in those areas that *each respective province* presupposed were essential to its future security and prosperity.

This provincial pressure for decentralization was strongly resisted by the federal government controlled by the Liberals under Prime Minister Trudeau. Using the federal resources at his disposal, Trudeau battled the decentralized federal vision of the provinces by promoting his own vision of federalism. Thus, as David Milne surmised, "[t]he federal Liberal program under Trudeau became obsessed with the idea of defending Canada by preserving federalism's balance of power because this had always lain at the heart of Trudeau's philosophy of state."[8] As a result, the Trudeau response and counter vision to decentralized federalism shaped the views, attitudes and strategies of the respective provincial governments. Consequently, the Canadian constitutional equation featured the competition between alternate views of Canadian federalism fighting for primacy in Canada's constitutional arena. This competition, especially during the antagonistic constitutional politics of the late 1970s and early 1980s, resulted in both the federal and provincial combatants seeking to forge a constitutional shield that would ensure them protection from their belligerent opponents. Although Prime Minister Lester B. Pearson referred to the desirability of Senate reform in his government's 1968 policy statement *Federalism for the Future*,[9] it was not until a decade later that both the federal and provincial rivals attempted to shift the tide in Canada's ongoing intergovernmental battle by proposing the creation of a new Senate for Canada.

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[8] Milne, David. (1986) *Tug of Wars: Ottawa and the Provinces Under Trudeau and Mulroney*. Toronto: James Lorimer and Company, p. 24.

[9] "We believe . . . that the role and the powers of the Senate should be reviewed [so that it] might well be reconstituted so as to enable it to play a new role in representing the federal character of our country." See Pearson, Lester B. (1968) *Federalism for the Future*. Ottawa: Queen's Printer, p. 26.

The Two Faces of Senate Reform

The fact that both the federal and provincial governments, during intense periods of intergovernmental conflict, have proposed intrastate reforms, such as Senate reform, demonstrates their unspoken agreement that this direction of reform is an applicable response to the persistent inability of Canada's federal system to accommodate effectively the key territorial interests present in the nation. However, as Alan Cairns perceptively observes:

> Concealed behind the surface agreement on the direction of change are two distinct options, either giving power and influence at the centre to provincial governments, or making the central government more responsive to territorial diversities in ways which bypass provincial governments. These two options, which represent very different versions of intrastate federalism, may be labeled respectively provincial intrastate federalism, and centralist intrastate federalism.[10]

Even though the federal and provincial governments can agree on the apparent desirability of intrastate reform, the direction that such reform should take (i.e. either centralizing or decentralizing) is a contentious point. The centralizing or decentralizing effect of intrastate reform expected by either order of government depended on the view of federalism held by the respective government. For example, in 1978 the federal government's view that Canadian federalism had drifted too much toward an unacceptable state of decentralization prompted its intrastate response contained in Bill C-60. Bill C-60 proposed a House of the Federation in which half of the members would be selected by the federal parliament and half by the provincial legislatures. The respective political parties would receive the ability to appoint members to the new House proportional to their vote in the last election. As Alan Cairns suggests, the reformed Upper House was "designed to by pass the provincial governments . . . (and) make Ottawa more sensitive to regionalism, but not provincial governments as such."[11]

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[10] Cairns, Alan C. (1979) *From Interstate to Intrastate Federalism.* Kingston: Queen's University, Institute of Intergovernmental Relations, p. 11.

Similarly, the Pépin-Robarts report[12] recommended the creation of a new Senate that would accord the provinces direct representation by allowing each province to send appointed delegates to Ottawa. However, this proposal contained two features that would have prevented this new upper chamber from acting as a provincial house of obstruction, thereby strengthening the legitimacy of national decision-making without strengthening the influence of provincial governments. The first was restricting the new upper chamber's power to a suspensive veto over House of Commons legislation. The second, and more significant feature, was that the suspensive veto could only be imposed with at least a two thirds vote by the provincial delegates in the new upper chamber.[13] Despite having direct representation in the national government, the combination of these two structural features, especially the requirement for a high degree of senatorial cooperation, would have proffer on the provinces only a marginal degree of meaningful influence over the direction of national policy. Likewise, in its 1984 report, the Special Joint Committee of the Senate and the House of Commons on Senate Reform stated that "[i]n a parliamentary system, a government cannot serve two masters, whose wills might be diametrically opposed."[14] Consequently, it was recommended that the Senate provide equitable provincial representation through direct elections, but only be granted the power to exercise a 120 day suspensive veto over all House of Commons legislation (with one exception being to supply bills where the

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[11] Cairns, Alan C. (1979) "Recent Federalist Constitutional Proposals: A Review Essay." in *Canadian Public Policy*. (Vol. 5, no. 3): p. 356.

[12] Although this report is officially entitled *A Future Together* and was issued by The Task Force on Canadian Unity (1979), it is more commonly known by reference to its two co-chairs by Jean-Luc Pépin and John P. Robarts.

[13] See Pépin-Robarts, (1979) pp. 98, 128-129.

[14] Special Joint Committee on Senate Reform. (1984) *Report of the Special Joint Committee of the Senate and the House of Commons on Senate Reform*. Ottawa: Queen's Printer, p. 29.

Senate would exercise no power to amend).[15] In this way, increased provincial representation in Ottawa would give the federal government a greater degree of legitimacy in exercising its authority in the creation of national policy and concurrently weaken the legitimacy of provincial governments to claim to be the only legitimate regional spokespersons.

The federal rejection of the provincialist view of federalism and its attempts to maintain or even strengthen the federal balance in favor of the federal government encouraged certain provinces to counter with their own version of intrastate reform. In this sense, intrastate reform, specifically Senate reform, was seen by some provinces as a complimentary measure to formal constitutional devolution. Moreover, these provinces argued that intrastate reform was a necessary requirement if the provincial governments were to secure sufficient leverage in dealing with Ottawa especially in those areas of jurisdiction that the federal authorities would never devolve to provincial governments. Given this supposition, I would suggest that in the west, for instance, Trudeau's adamant rejection of the provincial demand for extensive constitutional decentralization was as important as the failure of the existing intrastate devices in placing the demand for Senate reform on the west's Constitutional agenda. The provincial goal of and insistence on decentralizing Canada's federal system by creating a system of provincial intrastate federalism is clearly evident in many of the reform proposals that emerged during this period. These proposals, based on a process of provincial government appointments, recommended that Canada's existing Senate be transformed into a House of Provinces. Although this type of proposal has fallen out of contemporary political favor, an examination of it provides valuable insights into the continuing demand for, and expectations of, Senate reform by provincial governments.

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[15] Special Joint Committee on Senate Reform, (1984) pp. 26-31.

The Senate as a House of Provinces

The provincial vision of a decentralized intrastate federal system was articulated in the series of proposals suggesting the creation of a new Senate to act, in practice, as a House of Provinces. This proposal was made by the Canada West Foundation (1978 and later revised in 1981), The Ontario Advisory Committee on Confederation (1978), and the Canadian Bar Association (1978). The most influential supporters of this Senate reform proposal were the provincial governments of British Columbia and Alberta since their status as governments gave them a legitimate and secure role in the constitutional reform process. British Columbia was the first to suggest the creation of this new parliamentary institution in 1978, while Alberta echoed such suggestions four years later. What follows, therefore, is an analysis of the House of Provinces proposal (based primarily on the recommendation of the British Columbia and Alberta governments). These provinces proposed these reforms in an effort to strengthen the influence and control of the provincial governments in national decision-making directly at the expense of the federal government's autonomy in national affairs.

The Substance of the Proposal

Generally speaking, in federal bicameral systems there are three interrelated and dependent components that determine an upper chamber's ability to defend the interests of the constituent states from the will of the national majority. These components are the distribution of members representing the nation's constituent states or provinces, the process by which members are selected to the upper chamber, and the types of powers the upper chamber members will wield in the national legislative process. Each of these components in the proposed House of Provinces will be examined in order to illustrate how this recommended reform was an expression of the provincialist view of federalism .

In examining the upper chambers of other nations, no universally accepted principle emerges for determining the distribution of members for an upper house. State representation, for example, can range from a weighted system of representation based on population, as it does in Canada, Germany and Switzerland, to a system of equal state representation as practiced in the United States and Australia. Nevertheless, the final distribution of state representatives will affect, although not exclusively, the ability of the upper chamber to function as a legitimate body for the effective representation and defence of state interests in national government. The Canadian system of weighted representation has been criticized for denying the governments of less populous provinces an effective voice at the centre because the present system is too heavily weighted in favor of Canada's two most populous provinces. This system, the less populous provinces argue, has the effect of duplicating the existing representation of the lower house in the upper chamber, thereby, denying the smaller provincial governments any meaningful influence in either national institution.

Moreover, the less populous provinces maintained that insufficient Senate representation results in the interests of their respective governments being continually overridden by or sacrificed to the interests of the two larger provincial governments who represent the national majority. Consequently, advocates of the House of Provinces argued that Canada needs to restructure its present system of provincial representation. Interestingly enough, both the Alberta and British Columbia proposals rejected a system of equal provincial representation[16] and advanced a system of weighted provincial representation (although each proposal differs on the actual distribution of seats for the respective provinces). The reasoning underlying the acceptance of weighted provincial representation is concisely outlined in the 1982 Alberta proposal.

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[16] Both the Alberta and British Columbia proposals suggest that equal provincial representation would have potentially crippling effects on Canada's practice of parliamentary responsible government. Additionally, the British Columbia proposal rejects equal provincial representation because "it would relegate Québec to a position much inferior (1 in 10 instead of 1 in 4) to its present position -- a consequence, given the unique linguistic and cultural exigencies of Quebec, both undesirable on the merits and politically unrealistic" (*British Columbia's Constitutional Proposals*, p. 18). However, a more compelling explanation as to why British Columbia rejected a system of equal provincial representation is because its weighted system of representation is based on regional representation, where British Columbia would constitute one of the five Canadian regions (the four others being Atlantic Canada, Ontario, Québec, and the West). "Canada has now evolved into a

> In Canada the effect of a weighted system of Senatorial representation would be to provide greater representation for the two large provinces of Québec and Ontario while at the same time giving greater recognition to the principle of provincial equality. Senatorial representation weighted in a manner which reflects the population diversities of the country would provide the smaller provinces with a significant voice in the second chamber. The central provinces could not dominate the Senate under a weighted system because they would be outvoted by the smaller provinces.[17]

Thus, a revised system of weighted provincial representation in the Senate would limit, depending on the types of powers that the Senate would exercise, the legislative autonomy of the House of Commons. For example, the combination of an absolute Senate veto and a revised system of weighted provincial representation would redistribute power and influence in national decision-making away from the central government (which is controlled by the two large provinces) to the smaller provincial governments who would hold the balance of power in the Senate. Under this new House of Provinces, the smaller provincial governments, provided that at least six of them acted in

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country composed of five regions the fifth being British Columbia, and the Constitution should be altered to take account of this reality" (*British Columbia's Constitutional Proposals*, p. 18). Under such a system, the government of British Columbia would have immeasurably more power and influence than if it were simply a province equal to all the rest.

[17] The actual distribution of seats Alberta proposed was that provinces with over 4 million (Ontario and Québec) would receive 10 seats each, provinces with 2 to 4 million (British Columbia and Alberta) would receive 8 seats each, provinces with 1 to 2 million (Manitoba) would receive 6 seats each, provinces with 500 000 to 1 million (Saskatchewan, Nova Scotia, New Brunswick, Newfoundland) would receive 4 seats each, and provinces under 500 000 (P.E.I.) would receive 2 seats each. The territories would receive seats either prior to or following their establishment as provinces. See Alberta (1982) *A Provincially-Appointed Senate: A New Federalism for Canada*. pp. 17-18.

unison, would be able to control substantially the direction of national policy. Of course, this ability to direct national policy depends on the provincial government's ability to control the actions of their representatives in the upper chamber. Therefore, the second component, the process of member selection, will substantially contribute to the ability of the upper chamber to represent and defend the interests of the provincial governments in national decision-making.

As with the system of provincial representation, Canada's existing system of senatorial appointment is argued to have crippled the Senate's ability to represent the interests of the provinces, let alone the interests of the provincial governments, as the Senators owe their allegiance to party rather than region or province. As a result, the proposed upper chamber contained provisions for the adoption of a new method of selection that would guarantee maximum control for provincial governments over their respective Senate members. This provincial control of Senators is required if the provincial governments, as opposed to provincial Senators, were to gain substantial influence over national decision-making. Of the alternative methods of selection, including direct election, appointment through electoral colleges, and direct appointment by provincial governments, the method that promises the greatest degree of provincial government control over the actions of its respective Senators is the process of direct provincial appointment.

In this method of Senatorial selection, the provincial governments would appoint, at their discretion, individuals to provincial delegations. These delegations were to be sent to Ottawa as representatives of the provincial governments in the national government. As outlined in the British Columbia proposal "[t]he legitimacy of the Senate to reflect the views of provincial governments will be assured by the fact that the leading Senator from each province will be a provincial Cabinet Minister who is clearly authorized to speak on his government's behalf."[18] Similarly, the Alberta proposal stated that "[b]ecause the actions of the federal government can have very substantial impact on the ability of the provinces to pursue public policy options, the direct appointment of instructed provincial delegates to the upper house would increase the input and influence of the provinces in those matters of federal policy which directly affect them."[19] The provincial government control over the upper chamber that this method of appointment facilitates would, in turn, strengthen the provincial governments, especially the less populous ones, by weakening the federal government's autonomy in the development of national policy. By controlling their respective Senators, provincial governments, if only as a last resort, could obstruct those federal initiatives considered harmful to or incongruent with the interests of the provincial governments. Thus, as Roger Gibbins writes, "[a] provincially-appointed upper house, . . . would give provincial governments direct leverage on the national legislative process and . . . could thus ensure that the national public policies were more in tune with . . . the interests of regional governments."[20] However, the effective control of Senators by provincial governments, even in a revised system of weighted provincial representation, would mean little if the Senators had little to no substantial and legitimate power to affect the formation of national policy.

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[18] British Columbia, (1978) p. 23.

Without legitimate and effective powers, increased provincial government representation and control in a reformed upper chamber would result, in all likelihood, in a nominal increase in the power of the provincial governments to check the federal government's present control over the direction and development of national policy. Consequently, at the heart of the provincial proposals for a new upper chamber are the recommendations for an explicit delineation of those federal legislative matters which would be subjected to either a suspensive or an absolute veto. In this regard, the ability of the provincial governments to check the federal government effectively would require that the absolute veto apply to a number of important federal legislative areas. According to the British Columbia proposal,

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[19] Alberta, (1982) p. 14.

[20] Gibbins, Roger. (1983) *Senate Reform: Moving Towards the Slippery Slope.* Kingston: Queen's University, Institute of Intergovernmental Relations, p. 4.

> The subject matters included in the absolute veto list (must) meet two criteria -- first they must have significant, as opposed to incidental impact on the provinces or regions of the country, secondly, they must be subject matters concerning which the provinces have both a large interest and an ability to contribute to formation of laws in that area.[21]

The British Columbia proposal lists seven legislative areas, spanning appointments to the Supreme Court, major federal Crown agencies and federal Commissions, certain constitutional amendments, provincially administered federal laws, the exercise of parliament's declaratory power, and approval over use of the federal spending power.[22]

In addition to these legislative matters, the Alberta proposal suggested that "exceptional" federal powers, such as the emergency power and powers of reservation, and those "other federal powers affecting provincial jurisdiction," including, for example, the federal power over taxation and the regulation of trade, should be subjected to an absolute veto.[23] The effect of granting an absolute veto over such important federal powers to a provincially appointed upper chamber, where the provincial governments would be able to control the actions of the upper chamber members, is to significantly weaken the federal government's control over the national policy-making process.

The House of Provinces to the Triple -E Senate: An Unbroken Thread

The House of Provinces proposals reflected the provincialist desire for a decentralized balance of power in our federal system. In this respect, the enduring quest for Senate reform by governments like Alberta can be explained in terms of the provincialist goal of expanding provincial power and authority in the national decision-making arena. However, in addition to possessing legitimate powers and providing for (at the very least) equitable provincial representation, a provincialist Senate must ensure that the provincial governments can achieve their goals through their respective provincial Senators. Fundamental to a provincial government's ability to affect the national legislative process is a provincial government's ability to influence, if not overtly control, the actions of their respective Senators. Presumably, therefore, the popular election of Senators could prevent the provincial governments from explicitly controlling the Senators representing their respective provinces. In light of this, one would think that any provincial government hoping to use a reformed Senate as a means of increasing the strength of the provincial governments in national policy-making would reject direct election as the process of senatorial selection. Consequently, Alberta's 1985 endorsement of a popularly elected Senate, given this line of reasoning, suggests that the Alberta government's continued demand for Senate reform, specifically its support for the Triple-E model, is not entirely consistent with the provincial government's desire to maximize its governmental influence in national government. Yet, a critical evaluation of Alberta's Triple-E Senate proposal does, in fact, support the contention that a primary *intention* of the Alberta government in its continued pursuit of Senate reform is to enhance provincial power and autonomy in the existing federal/provincial relationship. In this respect, the Triple-E Senate, especially its provisions on the election of Senators, is not a rejection of the objective of strengthening provincial governments through the control of provincial Senators, but rather, it is the Alberta government's new strategy in the pursuit of this objective.

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[21] British Columbia, (1978) p. 26.
[22] British Columbia, (1978) pp. 26-30.
[23] Alberta, (1982) p. 21.

The Triple-E Senate: An Evaluation[24]

Responding to Albertans' negative public reaction to its 1982 report on Senate reform,[25] the Alberta government established the Alberta Select Special Committee on Upper House Reform (ASSCUR) in 1983. In 1985, the ASSCUR issued its report entitled *Strengthening Canada: Reform of Canada's Senate.* The primary recommendation outlined in this report was that "[t]he Senate of Canada should maintain as its primary purpose the objective established by the Fathers of Confederation, namely to represent the regions[26] in the federal decision-making process."[27] Insofar as Alberta and the other "regions" were already accommodated in the federal decision-making process in 1985 by a federal government with an electoral majority in every region in Canada and a return to a harmonious state of intergovernmental relations, the necessity for Senate reform should have been perceived as weak. Yet the Alberta government issued its demand for Triple-E Senate reform in 1985. In part, this can be explained as a response to Albertans' deep sense of political alienation from the national political system and their rejection of the Alberta government's 1982 Senate reform proposal. However, it will be suggested that the Alberta Triple-E proposal, like its House of Provinces predecessor, is more than an attempt at simply guaranteeing regional representation and participation in national government. Specifically, it will be argued that Alberta's Triple-E proposal attempts to fashion a new Senate that will enhance provincial government power at the expense of federal government power. Whether or not a Triple-E Senate can have the effect intended by the Alberta government is uncertain. What will be demonstrated however, is that a central premise underlying Alberta's "Equal, Elected, and Effective" Senate is that the new house must to be designed to bolster the strength and influence of the provincial authorities in the national legislative process.

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[24] The Triple "E" model of Senate reform that is evaluated here is the Alberta proposal as outlined by the Alberta Select Special Committee on Upper House Reform, 1985, and amended by the Alberta Select Special Committee on Constitutional Reform, 1991.

[25] Many Albertan's out rightly rejected their government's central assumption that provincial appointments were instill a greater degree of legitimacy in the Senate than the present process of federal appointments.

[26] The ASSCUR footnotes 'regions' and writes that "For the purposes of this report, the term 'region' should be considered synonymous with the term 'province." ASSCUR, (1985) p. 4.

[27] ASSCUR,.(1985) p. 4.

With regards to designing a strong check on the central government, the writers of the Alberta proposal clearly intended to give the new Senate effective powers. In fact, the 1991 report issued by the Alberta Select Special Committee on Constitutional Reform (ASSCCR) recommended that the Senate be able to exercise three different types of vetoes over the House of Commons.[28] The first of these vetoes would apply to all legislation in federal matters that directly affect exclusive provincial jurisdiction, (such as the use of the federal spending power, taxation, declaratory powers, and other matters such as natural resource development) and would not be subject to any form of House of Commons override. The second veto, the special veto, "would be exercised over matters within concurrent jurisdiction, whereby an amendment to legislation by a majority in the Senate may be overridden by a vote [in the House of Commons] that is greater in percentage terms than the Senate vote to amend."[29] To illustrate, assume that the Senate votes 70% in favor to veto a piece of legislation affecting all concurrent jurisdictions,[30] the House of Commons would be required to vote 70% + 1 to override the Senate decision. The third veto category would be suspensive in nature applying to all remaining federal legislation, and would simply require the House of Commons to repass the disputed legislation by a simple majority. Unquestionably, with a democratic mandate, this Senate would be a powerful and effective chamber with the potential not only to shape policy through the amendment process to legislation, but with the political legitimacy to prevent a majority government in the House of Commons from fulfilling its legislative agenda in many important areas. However, as noted in the examination of the other Senate proposals, the grant of effective powers alone to the new Senate would not necessarily result in the strengthening of the provincial governments.

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[28] ASSCCR, (1991) p. 12.

[29] ASSCCR, (1991) p. 12.

[30] An official in Alberta's Department of Federal and Intergovernmental Affairs, outlined that concurrent jurisdictions encompassed more than the constitutionally delineated areas of agriculture and immigration. The Alberta government argues that since Confederation a number of areas emerged which are now shared jurisdictions between the federal and provincial authorities. During the negotiations leading to Charlottetown, these areas were defined to include, but are not limited to, telecommunications, culture, energy, family policy, financial institutions, industry and commerce, justice, language, native affairs, public security, recreation and sports, taxation and revenue, transportation, research and development and the environment.

The designers of the Alberta proposals were aware of this fact and attempted to fashion certain procedural features into their reformed Senate which, in my estimation, they hoped would ensure provincial governments a certain degree of control over the Senate. It is here that the drafters of the Alberta Triple-E proposal challenge the assumption that the direct election of Senators would necessarily free Senators from the control or influence of their respective provincial governments. Since the direct election of Senators had become an expectation of the Canadian people, especially the residents of Alberta, Alberta's Senate designers proposed a system for the direct election of Senators that would do more than simply grant the Senate democratic legitimacy.[31] Under this proposal Senatorial elections are to be based on the first-past-the-post system, held during provincial elections in which the senatorial constituency would encompass the whole province. This proposal maximizes the degree that the elected Senators would reflect the composition of their respective legislature (i.e. if a majority government is elected, it is highly likely that the voting would be duplicated in the senate elections resulting in a majority of the senators, if not all, being members of the governing party). In turn, this would increase the probability that the Senators would reflect the will of the provincial governments in Ottawa. Moreover, this combination of electoral components affords the provincial governing party at least one punitive measure to influence the actions of their province's representatives in the Senate. If only as a last resort, the provincial government's ability to determine the timing of provincial elections could be used to threaten the Senators with what would amount to a recall.[32] Although these electoral components would not make elected Senators automatons of the provincial governments, it is clear that this combination of components, all things being equal, would not yield as much Senatorial autonomy from provincial governments as a system of elections based on proportional representation where elections are held simultaneously with federal elections. This suggests that an underlying assumption in the Alberta proposal is that this prescribed set of electoral requirements would result in either one of two possibilities. One, the elected Senators would be beholden to the provincial party in power on the basis of party. Two, the elected Senators would find it extremely difficult to disagree with their respective provincial government's definition of provincial interest, especially during periods of federal-provincial conflict (as did the Alberta opposition parties during the Lougheed years in Alberta). In this respect, it seems that the Alberta proposal for a Triple-E Senate is a consistent expression of the provincialist federal vision and the desire to realign the federal balance in favor of the provincial governments.

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[31] See for example the 1989 Alberta Senatorial Elections Act. In response to the Meech Lake Accord's interim process of filling vacancies in the Senate, the Alberta government chose to hold Senatorial elections rather than directly choosing which individuals would be submitted to Ottawa.

The Path of Senate Reform and the Road to Charlottetown

The pursuit of Senate reform by governments such as Alberta is sustained, in large part, by their desire to enhance the status of provincial authority by realigning the federal system with the provincialist view of federalism. There is an expectation in the provincial capitals, particularly in the west, that properly designed Senate reform can offer the provincial governments a full and equal partnership in the Canadian federation. Nevertheless, Senate reform is impossible without the cooperation and consent of the federal government and parliament of Canada. The fact that there has been no significant or wholesale Senate reform in Canada's history is a manifestation of the federal and provincial authorities' inability to agree on an acceptable compromise on the federal balance in Canada. This reality is reflected in the provincial and centralist demands for Senate reform that have competed for ascendancy in the constitutional arena. The August 1992 proposal for Senate reform was historic first in Canada, as it had the approval of all eleven governments. To understand the Charlottetown Senate package, we must examine the events leading up to the constitutional accord -- the patriation of the Constitution in 1982 and the Meech Lake Accord. These events shaped the process and content of the constitutional negotiations which followed them and, indeed, they continue to define Canada's constitutional options.

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[32] Admittedly, there would have to be a significant level of conflict between the provincial governing party and their Senators to evoke such a measure. Even in such instances the provincial government could not resort to such a tactic often for fear of some type of punitive electoral reprisal. Nevertheless, this does not undermine my general point that while Alberta's Triple-E proposal was designed to meet the public's demand for an elected Senate, in practice it would provide the provincial governments with a degree of influence over their Senatorial representatives, thereby increasing each respective provincial government's control in the national policy-process.

Chapter 3

Canada's Constitutional Reform Process and Its affect on Senate Reform

Although the Charlottetown Accord failed to survive the national referendum held on October 26, 1992, the Charlottetown experience had a profound impact on the quest for Senate reform. For instance, as illustrated throughout the previous chapter, provinces like Alberta have demanded a reformed Senate in order to increase their respective autonomy and influence in national governance. However, the Senate reform agreement contained in the Charlottetown accord departs from the provincially supported Senate reform models, such as Alberta's Triple-E proposal. Thus, to determine why this occurred and to assess what future exists for Senate reform, there must be a solid understanding of the central political factors that affected Canada's constitutional reform process and resulted in the constitutional consensus at Charlottetown. The central objective of this chapter is to provide such an understanding in preparation for the concluding discussion on the future of Senate reform. In this regard, the sole task of this brief chapter will be to identify those factors that acted as the essential determinants in the process leading to Charlottetown. Once this task is accomplished, the following chapter will examine the series of negotiations that led to Charlottetown and detail how these factors interacted in order to define the specific nature of the Senate reform agreement.

Canadian Regionalism and Constitutional Reform

In his examination of the Senate issue, C. E. S. Franks observes that the historic absence of any significant Senate reform has resulted "because there is no agreement on the direction which reform should take."[1] Although Franks is correct in this observation, it must be noted that the difficulty in reforming the Canadian Senate, as well as Canada's Constitution, has resulted from a more widespread, perhaps even chronic, inability on the part of Canada's First Ministers either to forge a common vision on the acceptable balance between the federal and provincial governments in this country's system of national government or to have the Canadian public accept a common vision. As with many other phenomena in Canadian politics, the inability of political elites to define an acceptable and lasting national definition of federalism can be explained by the existence and evolution of Canadian regionalism.

In Canada, the unequal distribution of population and important economic resources has resulted in the emergence of territorially based cleavages that have developed regionally unique, and at times competing, social, political, and economic aspirations. These regional aspirations, which are pursued in Canada through powerfully institutionalized outlets, namely provincial governments, have led to the development and promotion of differing regional views on the appropriate structure of Canadian federalism. In turn, these regional views of federalism have become guiding tenets in the respective political cultures of the various Canadian regions and have established powerful determinants that circumscribe the range of politically acceptable actions that provincial governments are able to pursue. Although there are several variables[2] which affect government action, it seems that the most significant variable in the behavioral equation is the governmental desire to alter Canada's system of national government so that it conforms to a particular government's respective view of federalism (which that government presupposes is necessary for the attainment of its particular set of aspirations). The importance of this point cannot be overstated, as it is the interaction of these regionally entrenched federal perspectives that determines, in large part, to what extent Canada's eleven governments can compromise and reach agreement on Canada's Constitutional reform, if at all.

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[1] Franks, C. E. S.. (1988) "The Canadian Senate in the Age of Reform." *Queen's Quarterly*. (Vol. 95 no. 3): p. 672.

[2] For an interesting and novel explanatory framework which provides an excellent foundation for the review of the development of Canadian federalism see Simeon and Robinson, (1990) Chapter 2.

In the western provinces, for example, there is an almost universally accepted perception[3] amongst the political elites that Canada's existing federal structure prevents the west from fully realizing its economic aspiration. As a result, the west has developed a vision of federalism in which there is a significant decentralization of power to the provinces which may be accomplished by either the formal constitutional devolution of federal jurisdiction or the creation of provincially controlled mechanisms in national government. This is argued to be necessary so that western Canada would have the necessary authority and autonomy of action to fulfill its particular set of aspirations within Confederation. Similarly, Québec views the present federal arrangement as a serious obstacle to the achievement of its fundamental goals. Québec demands that it be granted the necessary legislative authority and governmental autonomy to safeguard the survival of the French language and culture in North America permanently. In this respect, Québec shares western Canada's desire to decentralize federal power; however, Québec's federal vision entails formal constitutional devolution rather than the creation of provincially controlled mechanisms in national government. Québec implicitly rejects the principle of intrastate reform without significant decentralization, because such reform constitutes a potential threat to Québec's present status and the political influence that the province presently exercises in Confederation given its considerable population.

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[3] In examining both government position papers and constitutional reform proposals, this perception becomes acutely evident. See for example the last chapters treatment of Alberta and British Columbia's position on the Senate.

Conversely, the provincial governments in Atlantic Canada resist any unqualified decentralization because they fear that such decentralization will undermine regional equalization and will result in adverse economic and social consequences for their region. Likewise, Ontario opposes, in principle, any significant federal restructuring since it exercises, like Québec, considerable influence in the present federal system. In virtue of the political sway that Ontario is able to exercise in Ottawa, it resists any significant federal decentralization that would substantially weaken the national government because, by extension, this would weaken Ontario's influence over national affairs. In addition to the respective provincial visions on the proper federal structure, the federal government pursues its own view of Canadian federalism. Although the present federal system makes the national government more sensitive to the regional concerns of the more populous provinces, the federal government has no one set of regional objectives which defines its federal vision. Rather, the federal government's seeks to extend, or at the very least, to defend its existing jurisdiction and autonomy. This fact, in combination with the government party's ideological disposition towards federalism also contributes to the government's final position on the proper balance between the federal and provincial authorities in Canada's federal system. In the Canadian context therefore, the differing social, political, and economic objectives of the respective governments has produced not only differing but, in specific instances, explicitly conflicting definitions on the proper federal structure for Canada.

This political reality has brought regions, provinces, and governments into direct competition with each other over the fundamental definition of Canadian federalism. The failure to agree on the direction of meaningful Senate reform reflects the lack of a common federal definition or, more specifically, thecompetition between the different federal views in Canada that have resulted from the tides of regionalism in Canada. The interaction between the differing visions of federalism was an instrumental, but not the exclusive, factor that shaped the nature of the Senate reform agreement reached in Charlottetown. Although the different federal visions of the respective actors were important variables in this process, there were two additional factors which affected the outcome in Charlottetown. In order to understand how these factors developed and affected the manner in which the respective actors behaved, a review of the events and circumstances that preceded the Charlottetown accord is required.

Before Charlottetown: The Legacy of 1982

Ostensibly, the recent prominence that Senate reform has achieved in the national political arena and the subsequent agreement reached in Charlottetown can be attributed to the persistence of notable provincial governments and regional organizations in voicing their demands for Upper Chamber reform. However, this concerted effort would have gone, in all likelihood, largely un-rewarded if Canada's recent constitutional history had evolved in a decidedly different manner. For instance, if the federal government had been able to secure Québec's signature on the *Constitution Act, 1982*, there would have been no imperative to pursue subsequent constitutional reform. Although our nation's Constitution has legal authority in all parts of Canada, it has been argued that it lacks the requisite political and moral legitimacy for it to be nationally accepted. According to those who argue this, the absence of Québec's signature prevented the successful renewal of Canada's political union because the people of Québec, even if it was by their own government's choosing, were symbolically excluded in 1982. The symbolic exclusion of Québec, or what the Québec press refer to as the "great injustice of 1982," forced a subsequent round of constitutional reform as a means of securing Québec's signature and putting Canada's unity question to rest. The perceived necessity for re-opening the Constitutional debate provided an opportunity for the Senate reform issue to find a secured position on the national agenda.

For several years after patriation, however, constitutional politics in Canada was forced to remain in political stasis. The Liberal government in Ottawa, having accomplished its primary constitutional objectives in 1982, felt no particular need to return to the Constitution especially with the Parti Québécois still holding power in Québec's National Assembly. Nevertheless, the disillusionment of Québec Nationalists, combined with Canada's failure to secure Québec's formal agreement to the new Constitution, led to demands for a "Québec round" of constitutional negotiations. As Richard Simeon writes, however,

> Two essential conditions had to be met before the "Québec round" would succeed. First, there had to be a federal government in office which placed reconciliation with Québec at the top of its agenda, and more important, which was prepared to accept at least some of the demands of the fundamental assumptions about the distinctive character of Québec which had underlain the aspirations of all Québec governments since the Quiet Revolution in the 1960s. Second, there must be a government in Québec which was equally committed to this goal, and which was unequivocally federalist in orientation.[4]

As Simeon later notes, these two conditions were satisfied with the national election of the Progressive Conservatives under Brian Mulroney in 1984 and the election of the Québec Liberals, led by a redeemed Robert Bourassa, in the following year.

The Meech Lake/Langevin Accord

Six months after the provincial Liberals defeated the Parti Québécois, Gil Rémillard, Québec's minister for international relations and Canadian intergovernmental affairs, outlined the five conditions that Ottawa and the provinces would have to accept if they expected Québec's signature on the *Constitution Act, 1982*. The conditions were "(1) the explicit recognition of Québec as a distinct society; (2) a guarantee of increased powers in immigration matters; (3) the limitation of federal spending power; (4) recognition of a right of veto; (5) Québec's participation in the appointment of judges to the Supreme Court of Canada."[5] As it stood, these five conditions represented the minimum of the traditional demands that Québec has made in pursuit of its nationalist vision. In August of 1986, three months after Québec announced its five conditions, Canada's Ten Premiers gathered in Edmonton for their annual conference. They issued a statement accepting Québec's five conditions as a basis for negotiation on the Constitution (which became known as the "Edmonton Declaration"). The declaration read:

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[4] Simeon, Richard. (1988) "Meech Lake and Visions of Canada" in Swinton, Katherine E. and Carol J. Rogerson, eds. *Competing Constitutional Visions: The Meech Lake Accord*. Toronto: Carswell, p. 8.

> The premiers unanimously agreed their top constitutional priority is to embark immediately upon a federal-provincial process, using Québec's five proposals as a basis of discussion, to bring about Québec's full and active participation in the Canadian federation. There was a consensus among the premiers that then they will pursue further constitutional discussions on matters raised by some provinces, which include, amongst other items, Senate reform, fisheries, property rights, etc.[6]

The most compelling reason why the premiers agreed to put aside their constitutional agendas in order to concentrate on Québec's five conditions is because it was the most practical political alternative available to them. That is, without Québec at the negotiating table any future constitutional change would be extremely difficult, if not politically perilous.[7] However, the premiers who held to the principle of provincial equality, enshrined in the Constitution Act, 1982, believed any concessions made to Québec on its immediate concerns should be extended to the other provinces in order to preserve the status of the other provinces in Canada. The Edmonton Declaration not only signaled the beginning of the "Québec round," but had two fundamental implications for future Senate reform. The first was to prevent the wholesale reform of the Senate, Triple-E or otherwise, from being implemented in this round of Constitutional reform by relegating the Senate reform issue to the next round of reform. The second, however, was to assure that the Senate reform issue would have a guaranteed position on the agenda of any subsequent rounds of constitutional negotiation.

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[5] Rémillard, Gil. (1990) "Québec's Quest for the Survival and Equality Via the Meech Lake Accord" in Behiels, Michael D. ed. *The Meech Lake Primer: Conflicting Views of the 1987 Constitutional Accord*. Ottawa: University of Ottawa Press, p. 29.

[6] See Monahan, Patrick J. (1991) *Meech Lake: The Inside Story*. Toronto: University of Toronto Press, p. 61.

[7] This conclusion is implied in Andrew Cohen's examination of the Meech Lake process. In this respect, Cohen's interview with Richard Hatfield is particularly informative. "'We all knew that we weren't going anywhere [on the constitution] until Quebec signed,' recalls Richard Hatfield. 'That was a big factor. There was some tension, some worry, some wringing of hands by some premiers. We did, in fact, reach an agreement very quickly, but I knew it wasn't based on soul wrenching conviction. It was practical.'" See Cohen, Andrew. (1991) *A Deal Undone: The Making and Breaking of the Meech Lake Accord*. Vancouver: Douglas and MacIntyre, pp. 83-85.

Although the premiers pledged themselves to keep this a "Québec round," it inevitably became a "provincial round." In the bilateral discussions that Québec conducted prior to the negotiations at Meech Lake, the English speaking premiers and their governments wanted to know how Québec's five conditions would affect their authority and status in confederation. As Andrew Cohen explains, "[i]f Québec asked for another power, the provinces had to know its effect on them. If the impact was substantial, they argued they should have to have it, too. So accepted was this, so naturally did it flow from the discussion, that there seemed nothing unusual in it."[8] It is in this respect that Québec's demand for a veto over future constitutional changes allowed Alberta to extract some concessions on Senate reform from the other governments as the price of its support.[9] Since the only way to grant Québec its veto was to grant all provinces a veto, any future Senate reform was to be subject to a unanimous provincial and federal agreement. As Patrick Monahan writes, "Alberta's Getty said that, if Senate reform were to be made subject to a unanimity requirement, it would be essential that there be some guarantee that reform would actually take place."[10] Looking at the Meech

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[8] Cohen. (1991), p. 89.

[9] Monahan suggests that the Alberta government, and the western provinces in general did not insist "on agreement to a Triple-E Senate as the price of acceptance of Quebec's constitutional proposals [because] unanimous agreement was likely to prove elusive, or even impossible." Consequently, Alberta was willing to settle for a means of ensuring that the constitutional door remained ajar keeping future Senate reform a possibility. See Monahan. (1991), p. 48.

[10] Monahan. (1991) , p. 94.

Lake/Langevin Accord, the guarantees that Alberta received were provisions for a new selection procedure for Senators and that Senate reform would hold a permanent position on all future First Ministers' Conferences until the issue had been successfully resolved.

There was no consensus on the Meech Lake/Langevin Accord among the proponents of Senate reform. There were those Senate reformers who believed that the Meech Lake/Langevin amending formula, requiring unanimity, would present an insurmountable obstacle to any meaningful Senate reform in the future. Alternatively, there were those in the Senate reform camp who argued that the inclusion of Senate reform as a permanent issue on the agenda of future First Ministers' Conferences (until such reform had been achieved) would create enormous public pressure on our political leaders to come up with an acceptable Senate reform proposal. In the end, the failure of the Meech Lake/Langevin Accord makes the resolution of the above debate academic, but the debate itself had profound consequences for the Senate reform debates. The basic uncertainty around whether the Meech Lake/Langevin Accord would lead to future Senate reform solidified the opinion of many Senate reform proponents that Senate reform, if it was ever to be achieved, must be both comprehensive in nature and proceed concurrently with any other proposed constitutional reforms. For example, Peter McCormick and David Elton, two of Senate reform's most ardent supporters, succinctly expressed what became a dominant western attitude during the Meech Lake process. They said:

> . . . if the West meekly acquiesces now, on the grounds that it is selfish and unCanadian to insist on some linkage of issues, it will have nothing to bargain with, nothing to trade off, when discussions on the western agenda finally begin. (The record also suggests that it will be a long time indeed before the issues will be addressed; the meek may inherit the earth, but they won't accomplish much in the way of amendments to the Canadian Constitution.) Only an eccentric labour union negotiator would advise the union to agree to everything management has suggested and just hope they felt generous

> afterward, but this is precisely the behaviour that seems to be expected of western Canadians.[11]

In this respect, it is evident that the Meech Lake process had a profound impact on the future of Senate reform and its relation to the Charlottetown Accord. Firstly, the failure of the Meech Lake process led to new political pressures, in the form of renewed support for separatism in Québec, that compelled the federal government to pursue another round of Constitutional negotiations. However, the widespread public disenchantment with the Meech Lake process, particularly the perception that this round dealt only with the concerns of Québec, not only contributed to the downfall of the Meech Lake/Langevin Accord, but made it politically untenable that any subsequent round of constitutional negotiations would be constrained by something similar to the Edmonton Declaration. Moreover, the Meech Lake experience created a consensus in western Canada, particularly in Alberta, that Senate reform must be linked to other constitutional issues if it were going to be achieved in Canada. Thus a second factor emerged out of the Meech Lake process that affected the Charlottetown round of constitutional negotiations. This factor was the expectation that the constitutional agenda be expanded by linking issues, such as Senate reform, to the Québec's constitutional demands. Consequently, the combination of these factors ensured that Senate reform was an integral issue in the resolution of Canada's unity crisis.

In the Wake of Meech Lake

With the collapse of the Meech Lake/Langevin Accord, the prospect of resolving Canada's unity dilemma seemed uncertain at best, as Robert Bourassa declared that Québec would not return to the constitutional negotiating table with the other provinces. Rather, Bourassa announced that Québec would pursue bilateral talks with the federal government and would formally return to the constitutional negotiating table only when the rest of Canada was willing to accept, at the very least, the five conditions that Québec had secured in the defunct Meech Lake/Langevin Accord. Québec's withdrawal from multilateral constitutional negotiations, along with two other developments in Québec affected Canada's constitutional reform process and the final proposals for the new Senate.

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[11] McCormick, Peter. and David Elton. (1987) "The Western Economy and Canadian Unity." Western Perspectives. Calgary: The Canada West Foundation, p. 6.

The first development was the release of the Allaire report which was adopted by the Québec Liberal party as its constitutional platform in January of 1991. The Allaire report was a radical departure from the Québec Liberal party's traditional federalist vision. The report recommended that twenty-two areas of legislative jurisdiction should be transferred to Québec's National Assembly, leaving Ottawa with only minimal influence in the province of Québec. In addition, the report recommended that Québec receive its veto over Constitutional reform, and the abolition of the Senate. Consequently, the Allaire report infused a revived element of radical nationalism into mainstream Québec politics. This altered the existing attitudes, not only in Québec, but in the rest of Canada as the possibility of Québec's separation was no longer perceived as a trivial threat from Québec's fanatical separatists.

The second development began with the appointment of the Bélanger-Campeau committee by Québec's National Assembly. This committee was given a mandate to review Québec's present and future position in Canada and to outline the political alternatives available to the people and government of Québec. The Bélanger-Campeau committee released its findings in March 1991 and recommended that Québec issue, in effect, an ultimatum to the rest of Canada. The committee proposed that the government of Québec pass legislation that would fix a date for a referendum on the issue of sovereignty for Québec. This referendum was to be held if no prior agreement was reached on a new constitutional accommodation between Québec and the rest of Canada. In January of 1991, Robert Bourassa anticipated the committee's recommendations by announcing that if the rest of Canada could not accept Québec's minimum five conditions and reach an acceptable Constitutional agreement, the government of Québec would then be required to proceed with a referendum on the issue of the province's sovereignty. To this end, the National Assembly passed Bill 150 which set out October 26, 1992 as the sovereignty referendum deadline, and September 9, 1992 as the deadline for the National Assembly's approval on the referendum question. Therefore, the combined effect of the Allaire report and the deadline on a sovereignty referendum was to put what has been described as a "knife to the throat of the rest of Canada" to force the rest of the nation back to the constitutional negotiating table or face the possible political fragmentation of the nation.

Three factors shaped the negotiations resulting in the Charlottetown accord and the concurrent Senate reform agreement. The first was the existence of Canadian regionalism which has resulted in the competition between the respective definitions of Canadian federalism held by the participants in these constitutional negotiations. The second and third factors, however, are direct political consequences flowing out of the aftermath of the Meech Lake process. The second factor was the prevailing expectation that the post-Meech Lake round would be expanded to deal with more than just Québec's concerns, specifically other constitutional issues such as Senate reform and aboriginal self-government. That this constitutional round dealt with a more comprehensive list of issues was a consequence of the unanimity provision in the amending formula which allowed governments to link the resolution of one issue to other issues. The third factor that emanated out of Québec was the imposition of a deadline for a referendum on Québec separation. This placed the nation's leaders under enormous political pressure creating the perception that a constitutional compromise was a political imperative. These political realities influenced the behaviour of the participants and determined the outcome of the negotiations that led to Charlottetown accord, including the agreement on Senate reform.

Chapter 4

From the Waters of Meech Lake to the Shores of Charlottetown

Since Québec would not return to formal multilateral constitutional negotiations until the constitutional provisions contained in the Meech Lake Accord were accepted by the other governments, the responsibility for initiating the nation's constitutional reconciliation fell on the rest of Canada. In this respect, Québec's "knife to the throat" was successful as it compelled the rest of Canada to return to Canada's constitutional puzzle. However, it appeared that the rest of Canada had decided that if Canada's constitutional puzzle was to be solved in this round it needed the inclusion of more than just the pieces demanded by Québec. Hence, on September 24, 1991, the federal government responded to Québec's ultimatum by tabling for discussion an extensive package of constitutional reform proposals, entitled *Shaping Canada's Future Together*, that went well beyond the provisions contained in the Meech Lake Accord.

Addressing the issue of Senate reform, the federal government proposed a "directly elected Senate" for Canada where Senate elections would "coincide with elections of the House of Commons."[1] Citing "the agreement of all 11 governments" represented in the final communiqué of the June 1990

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[1] Government of Canada. (1991) *Shaping Canada's Future Together: Proposals.* Ottawa: Minister of Supply and Services, p. 17.

First Ministers' Conference, the federal government proposed "that the Senate provide for much more equitable provincial and territorial representation than at present."[2] Also suggested was that the federal government only be required to maintain the confidence of the Commons thereby allowing the Senate to debate and to vote on almost all measures introduced in the House of Commons.[3] There would be only two exceptions to this rule. The first would be in "matters of particular national importance, such as national defence and international issues" where the Senate would be able to exercise only a six-month suspensive veto.[4] The second would be in the case of appropriation bills where the Senate would have no authority whatsoever.[5] These proposals were then referred to the Special Joint Committee of the House of Commons and the Senate, co-chaired by Senator Gérald A. Beaudoin and Member of Parliament Dorothy Dobbie.

After hearing the testimony of 700 individuals at 78 different meetings and receiving 3000 submissions, the final report of the Special Joint Committee was tabled in the House of Commons on February 27, 1992, and then in the Senate on the following day.[6] Although the Special Joint Committee agreed that a reformed Canadian Senate should be directly elected and provide for a more equitable distribution of seats among the provinces,[7] it made several amendments to the other aspects of the federal government's proposal. Most significantly, the Special Joint Committee differed with the federal government's proposals on the powers of the new Senate. Whereas the federal government limited the Senate's authority over matters of national importance to a six-month suspensive veto, the Special Joint Committee wrote: "[w]e can see no convincing reason why the Senate should have less power to deal with these issues than others. We recommend therefore that legislation in this category be treated like other ordinary legislation and require the approval of the Senate as well as the House of Commons."[8] However, acknowledging the potential for deadlock between the two legislative chambers over normal bills, the Special Joint Committee recommended that the House of Commons should be able to override a Senate vote (although it did not specify the type of deadlock-breaking mechanism it prefers).[9] With respect to appropriation bills, the Special Joint Committee suggested that "this category [of legislation] should be clearly and narrowly defined to include only supply measures solely for the ordinary functioning of the government."[10] By narrowly defining supply bills, this Senate would have the ability, unlike the Senate outlined in the federal proposals, to challenge the federal government's general spending power. Moreover, the Special Joint Committee suggested that the Senate should be given the ability to review all bills, including supply bills. This ability was qualified as the Senate would "be required to dispose of the measure within 30-days of receiving it from the House of Commons. At the end of the 30-day period if the bill is amended or defeated by the Senate it would be necessary for the House of Commons to reaffirm the measure by a simple majority."[11] In the final analysis, the potential of this proposed Senate to be a powerful legislative check on the House of Commons depended on answering two unknowns. The first was the design of the final deadlock mechanism. And the second was whether or not Canadians would accept an elected but provincially unequal body as politically legitimate. The Special Joint Committee left these questions to be answered by the participants in Canada's Constitutional negotiation process.

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[2] Government of Canada. (1991) p. 19.

[3] Government of Canada. (1991) p. 20.

[4] Government of Canada. (1991) p. 20.

[5] Additionally, the Senate would be given a mandate to ratifying any appointments to the Governor of the Bank of Canada and the heads of an extensive list of "national cultural institutions" and "regulatory bodies and agencies." Government of Canada. (1991) pp. 20-21.

[6] See the Special Joint Committee of the House of Commons and the Senate. (1992) *A Renewed Canada*. Ottawa: Minister of Supply and Services, pp. iii-iv, xi.

[7] See the Special Joint Committee of the House of Commons and the Senate. (1992) pp. 45-50.

Anticipating the Special Joint Committee's recommendations, the Prime Minister invited provincial and territorial representatives, along with Aboriginal leaders, to meet with the federal government's Minister of

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[8] Special Joint Committee of the House of Commons and the Senate. (1992) p. 53.

[9] Special Joint Committee of the House of Commons and the Senate. (1992) pp. 54-55.

[10] Special Joint Committee of the House of Commons and the Senate. (1992) p. 56.

[11] Special Joint Committee of the House of Commons and the Senate. (1992) p. 56.

Constitutional Affairs Joe Clark. This meeting, held in Ottawa on March 12, 1992, marked the beginning of Canada's most recent attempt at Constitutional renewal. Subsequent to this initial meeting, federal, provincial, territorial, and aboriginal representatives met an additional 26 times over the next six months to establish the ground work that led Canada's First Ministers to Charlottetown and a constitutional consensus.

At the March 12th meeting, it was agreed that a consensus on a new constitutional package should be reached by May 31, 1992. As the participants began their work, the second factor, the expansion of Canada's constitutional negotiating agenda to include the constitutional and political issues that were inherent components of each participant's respective federal visions, was already having a significant impact on the process. For instance, a group of five provinces (Alberta, Manitoba, Saskatchewan, Newfoundland, and Nova Scotia) made the linkage between a guaranteed veto over future constitutional change for Québec and Triple-E Senate reform the central issue in these early discussions. However, as the negotiations proceeded into May, the participants could not reach any significant consensus and constitutional stalemate ensued. This deadlock occurred despite the mounting political pressure resulting from the self-imposed May 31st deadline and the more foreboding deadline established by Québec earlier in the year for its referendum. In essence, the basic reason for this inability to reach agreement was a result of each participant being unwilling to compromise on their respective federal visions and make the necessary concessions for an acceptable agreement. For example, the group of five's demand for Triple-E Senate reform, specifically their adamant insistence that any new Senate must have equal provincial representation and effective powers, threatened the respective federal visions of the federal government and Ontario and caused the ensuing deadlock in these discussions.

At these discussions, Ontario rejected the principle of equal provincial representation in the Senate that was central to the group of five's demand for Triple-E Senate reform. Ontario rejected this principle because such representation, in a democratically legitimate and politically effective institution, would weaken the authority of the House of Commons and by extension undermine the status and influence of Ontario, and by implication Québec, in national affairs. Accordingly, Ontario argued that if the new Senate were to be acceptable it could not be simultaneously equal and effective. In an attempt to break this deadlock, the federal government, which had its own objections to Triple-E Senate reform, introduced a new model of Senate reform which it maintained was a compromise between the two divergent visions of Canada federalism. The federal authorities suggested the creation of a new Senate that would exercise moderately effective powers, but would provide for equitable, rather than equal, provincial representation. This proposal proved to be unacceptable to the group of five, especially to representatives of Alberta and Newfoundland, who remained committed to the central element in their definition of Canadian federalism, that is, the principle of provincial equality.

In hopes of breaking the Senate impasse with only five days left in the May deadline, a variation of the equitable Senate model was advanced by British Columbia. British Columbia proposed that representation in the new Senate consist of an equal distribution of Senators among the five regions[12] of Canada. However, as with the federal government's earlier Senate plan, this proposal proved to be unacceptable because it lacked the necessary guarantee of provincial equality. According to Jim Horsman, Alberta's Minister of Federal and Intergovernmental Affairs and one of the group of five's chief spokespersons, provincial equality is the federal principle "reflected in a federal state in the second chamber. . . . Any other model (of Senate reform) . . . is simply a pale imitation of the House of Commons."[13] From this it is clear that the concept of provincial equality was the primary defining principle of the federal vision of the dominant members of the group of five and was the minimum condition for any acceptable Senate reform agreement, and consequently any Constitutional reform agreement. In response to

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[12] The five regions would consist of Ontario, Québec, the Atlantic provinces, the Prairie provinces and finally the fifth region being composed of British Columbia and the Territories.

[13] *Globe and Mail,* May 29, 1992: p. A2.

Alberta's position, Premier Bob Rae of Ontario argued that "[n]ot all federations are the same . . . [w]e're talking about a federation with a difference."[14] The Canadian differences, to which Premier Rae referred are the considerable population imbalances amongst the provinces, the salient regional cleavages, and the French-English dichotomy. Rae implicitly suggested that these Canadian peculiarities make the principle of provincial equality inapplicable to, if not explicitly unacceptable for, Canada's federal system of government. Consequently, the fact that Alberta and Ontario held contrary definitions of Canadian federalism resulted in their supporting inimical positions on the appropriate type of Senate reform for Canada. Hence, the strict adherence to each participant's respective federal vision caused the inevitable deadlock that led to the failure to reach a Constitutional agreement by the May 31st deadline. Despite this deadlock, the unpalatable political consequences of failure and the repercussions this would have in Québec's eventual sovereignty referendum encouraged the participants to extend Canada's Constitutional negotiations until June 10, 1992.

In the week that led up to the formal meetings on June 9, 10, and 11, it became evident that agreement on any Constitutional package would depend on some form of compromise on Senate reform. Although there was some movement in this regard, it appeared that the respective actors were still unwilling to make the necessary compromises. For example, the federal government and Ontario tried to convince Alberta and the other provinces to abandon their quest for a Triple-E Senate. In response, Premier Don Getty resolutely stated that Alberta "won't be part of any agreement that does not have a Triple-E Senate. . . . You may not like it but it's a fact."[15] Hence, Alberta's commitment to the Triple-E model and Ontario's resistance to equal representation meant that any Senate compromise would be a trade off between equal provincial representation and the types of powers any new Senate would exercise. During the three days of talks, Saskatchewan's representatives introduced a model of Senate reform that proposed a new upper chamber having an equal number of Senators, but operating under a weighted voting system where the Senators from the more populous provinces would cast more votes, thereby giving these provinces greater influence in Senate deliberations. In the end, this proposal made little headway in resolving the Senate impasse, but had the effect of splintering the group of five so that Alberta, Manitoba, and Newfoundland remained as the only provinces actively pressing for Triple-E Senate reform. Even though these negotiations came to a close with no formal agreement being reached, there emerged a tacit agreement to keep the talks going at the informal level in hopes of reaching some form of compromise before the passage of the Québec deadline.

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[14] *Globe and Mail,* May 29, 1992: p. A2.
[15] *Globe and Mail,* June 5, 1992: p. A1.

Near the end of June, Prime Minister Brian Mulroney summoned the provincial representatives to Ottawa and announced that if the they could not reach an agreement by July 15, 1992, the federal government would assemble a constitutional package of its own. In part, the federal government would base this package on the areas of agreement reached in the previous four months of discussion and present this to the Québec government. In addition to believing that the premiers would not be able to reach any agreement, Mulroney set a deadline for federal government action because of the third political factor emanating out of Québec. Particularly, the federal government faced its own July deadline because the National Assembly committee that was to study the federal offers was scheduled to meet by the end of July. The federal government had to make an offer to Québec, as the Québec government had limited flexibility in responding to any federal offers after this date. Specifically, Québec's bill 150 assigned September 9, 1992 as the final day upon which the referendum question could be voted on. Consequently, if Québec's referendum were to be held on the federal proposals, rather than the question of sovereignty, and the National Assembly were to have sufficient time to debate the specific wording of the question, the government of Québec had to make the necessary amendments to this legislation by early August of 1992.

Although the Prime Minister had his own doubts about the likelihood of the provinces reaching an agreement, he used the federal deadline to increase the pressure that the provinces, specifically Alberta and Newfoundland, faced in the negotiations held on June 28 and 29, 1992. For example, four days prior to these talks, Prime Minister Mulroney attempted to entice Alberta into accepting a compromise on Senate reform by suggesting that a new Senate would guarantee equitable provincial representation, but that Senators in the proposed Upper Chamber would have equal voting power on natural resource bills. In a further attempt to increase the political pressure on the hold out provinces to accept the federal offer, the federal government intimated to the Aboriginal leaders that the future of Aboriginal Self-government depended upon the successful resolution of the Senate reform issue. This caused Aboriginal leaders to reprimand the premiers by acrimoniously declaring how it was immoral and reprehensible for the interests of Canada's Aboriginal people to be sacrificed in favor of a disagreement over how to reform a political institution. Despite the additional political pressure placed on the hold out provinces, the June talks only produced an agreement to continue discussions on July 3, 1992.

With the pressure from the approaching Québec referendum bearing down heavily on the participants and an explicit unwillingness to further jeopardize Canadian unity, a number of provinces tentatively agreed on a Senate reform proposal during a meeting on July 3rd in Toronto. Although the federal government and Ontario expressed their reservations about the effects that this proposed Senate would have for the future governability of Canada, they accepted it as a basis for discussion. The key to this breakthrough on the Senate impasse was Alberta's agreement to support representation by population for the House of Commons in exchange for provincial equality in the Senate. This Senate proposal not only kept the discussions alive, but represented a concrete opportunity for the premiers to reach an acceptable compromise on the Senate issue. The key elements[16] in this proposed Senate were as follows: 1) that each province have equal representation of eight Senators; 2) that all natural resource bills could be vetoed by the Senate with a vote of at least 50 percent plus one; 3) that bills affecting areas of shared federal/provincial jurisdiction could be vetoed by a vote of at least 60 percent; 4) that all other legislation (except supply bills) could be vetoed with a Senate vote of greater than 75 percent; 5) that the Senate would be able to exercise only a suspensive veto over supply bills; 6) that Senate approval for bills affecting French language and culture would require a double majority of French-speaking and English-speaking Senators; 7) that provincial equality in the Senate would be balanced by a more equitable representation by population in the House of Commons (i.e. Ontario's loss of representation in the Senate would be compensated by an increase in representation in the House of Commons). With this Senate proposal as the basis for discussion the premiers were able to negotiate through the Senate impasse which had seriously impeded progress in this round of Constitutional reform.

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[16] As reported in the *Globe and Mail*, July 4, 1992: pp. A1-3.

On July 7, 1992, the nine provinces met with the federal government in Ottawa and proceeded with discussions on the July 3rd Senate proposal. However, Québec's absence from the negotiating table presented a temporary obstacle to reaching a consensus on the Senate package as there was concern about what Québec would find acceptable. According to reports in the *Globe and Mail*, "[t]he turning point . . . had come when Alberta Premier Donald Getty argued that the premiers there could not read Quebecker's minds -- and should carry on to reach an agreement regardless."[17] In the negotiations during the rest of the day, a new agreement on Senate reform slowly emerged representing a compromise between the competing centralist and provincial federal visions that had caused the previous impasse on Senate reform. As with the July 3rd Senate proposal, this package proposed the following: all natural resource bills be subjected to an absolute Senate veto comprising a vote of at least 50 percent plus one; supply bills be subjected to a thirty day suspensive veto; and, bills affecting French language and culture require a double majority of French-speaking and English-speaking Senators. The compromise between the equality of the provinces in the Senate and the equality of the people in the House of Commons was reaffirmed as each province would have an equal number of Senators and representation in the House of Commons for Alberta, British Columbia, Ontario, and Québec would more accurately reflect their respective populations.

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[17] *Globe and Mail*, July 9, 1992: p. A 5.

The significant difference between the two proposals is reflected in the manner in which the new Senate was to exercise its legislative review powers. Dropped from the July 7th agreement was the provision that when 60 percent of the Senate voted against legislation affecting areas of shared jurisdiction it would be absolutely vetoed. Also eliminated from this agreement was the proposal that all other areas of legislation could be vetoed by a minimum 75 percent Senatorial vote against. In the place of these two provisions was the proposal that all legislation (excluding natural resources and supply bills) be subject to an absolute veto consisting of a minimum 70 percent Senatorial vote against the legislation in question. Additionally, the July 7th Senate package proposed that any vote against a piece of legislation between 60 and 69 percent would trigger a joint sitting between the Senate and the House of Commons. In such a sitting, the numerical superiority of the House of Commons would preserve, in most instances, the Lower House's legislative dominance which is necessary to the successful operation of Canada's system of responsible parliamentary government. Consequently, Ontario and the federal government exchanged guaranteed provincial equality in the Senate for a reduction in the type of veto powers that the new Senate would exercise. Although the new Senate did not exactly emulate the Triple-E Senate ideal as advanced by Alberta, it did represent a significant compromise between the competing centralist and provincial federal visions. As Premier Clyde Wells later confirmed to reporters, "[i]t's not a true Triple-E Senate, . . . [but that] was the best compromise that we could work out.[18] Resolution of the Senate issue provided the premiers with the necessary momentum to reach a consensus on the remaining outstanding issues and frame a package of Constitutional reform proposals to be presented to Québec.

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[18] *Globe and Mail*, July 9, 1992: p. A 12.

The Québec impact on Senate reform

Characteristically, Premier Bourassa's initial response to the premier's unity package was, at best, enigmatic. Although Bourassa suggested that the package, particularly the Senate agreement, would be a "hard sell in Québec," he did not intimate that the premiers' unity package was an unacceptable basis for discussion. The federal government seized this opportunity and invited the premiers to attend a formal meeting of First Ministers in order to discuss the premiers' unity package. This meeting was held at Harrington Lake, Québec, on August 4, 1992, marking Québec's return to Canada's Constitutional negotiating table after a two year absence. At this meeting, Québec expressed its reservations concerning an equal Senate. In the words of Premier Bourassa, "[o]ne of the fundamental characteristics of Canada is to be a bilingual country, that's the essence of the country. . . . And it could be very difficult for Québec to accept a Senate where you'll have only a handful of Francophone Senators."[19] The meeting ended without any agreement being reached and there was serious speculation that any unity agreement would be reached because Alberta and Newfoundland would not retreat from the principle of equal provincial representation in the Senate.

The First Ministers met again at Harrington Lake on August 10th, and although there were some tentative suggestions by New Brunswick's Premier McKenna on a possible compromise between Québec and Alberta over the principle of provincial equality in the Senate, the premiers were unable to make any headway on the Senate issue. Discussion resumed between August 18th and August 22nd as the First Minister's met in Ottawa. As Jeffrey Simpson reported, the First Ministers were making little progress on the Senate issue until Premier McKenna introduced a new set of Senate proposals based on his Harrington Lake suggestions made the previous week.[20] In order to reach a compromise between Alberta and Québec, McKenna suggested that the July 7th Senate provisions for equal provincial representation and increased House of Commons representation for Alberta, British Columbia, Ontario and Québec be retained, but that the Senate's powers over House of Commons legislation (excluding the areas of natural resources and government supply) be replaced with the provision that a 70 percent Senate vote would automatically trigger a joint sitting between the two Houses (where the majority of the combined Members of both Houses would decide the fate of the disputed legislation). Premier Romanow of Saskatchewan added to these suggestions that Québec could be given a guaranteed floor of 25 percent of the seats in the House of Commons in order to protect its distinct status in Confederation. Saskatchewan's Premier also suggested that the joint sitting provision be reduced to a 60 percent vote in order to increase the effectiveness of the Senate. By suggesting the elimination of the Senate's ability to amend or veto House of Commons legislation in any binding or absolute manner (excluding natural resource legislation), Premiers McKenna and Romanow proposed a new type of interaction that would underpin the relationship between the reformed Senate and the House of Commons and determine the Senate's subsequent political effectiveness.

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[19] *Globe and Mail*, August 5, 1992: p. A 4.

[20] Much of the following chronology of events is based on Jeffrey Simpson's article, entitled "Deciphering the constitutional puzzle," printed in the *Globe and Mail*, August 22, 1992: pp. A 1, A 3.

In this proposal the Senate would be able to amend or veto all House of Commons legislation (excepting natural resource bills and supply bills) by a minimum vote of 60 percent. In the event of such an amendment, the House of Commons could overrule the Senate's decision by winning a simple majority vote in a joint sitting of the two Houses. Although the Senate would have no absolute veto over the House of Commons in any area of legislation, other than natural resource legislation, this is not to imply that the Senate would be politically ineffective by design. Rather this design established a different interaction in which the Senate would exercise legislative influence over the House of Commons. The fact that the new Senate would be able to force a joint sitting of the two Houses introduced a new constraint on the federal government's control over the legislative agenda. Specifically, if the Senate forced a number of joint sittings it would reduce the already finite amount of time the federal government has in getting its legislation through our system of parliamentary government. In practice, therefore, granting the Senate the power to force additional debate over legislation extends it a degree of effective control over the parliamentary schedule. In turn, especially late in the government's mandate, the Senate's ability to disrupt the parliamentary schedule would encourage the federal government to make concessions to the upper chamber (and potentially to the opposition parties as well) so that it could achieve as much of its legislative mandate as possible. Of course the government would not have to concede to the Senate's demands, but rather, it may choose to settle the dispute through a joint sitting of the two Houses. Assuming unanimous Senate disapproval and that the opposition in House of Commons chooses to side with the dissenting Senators, the federal government must hold a majority of no less than 58 percent of the House of Commons seats in this new parliamentary system[21] in order to win a majority in the joint sitting. Assuming a more average degree of Senate disapproval being between 61 and 80 percent, the federal government would only be required to hold a House of Commons majority between 52 and 56 percent in order to preserve its legislative supremacy. Therefore, it would appear that a federal government with a modest majority would carry the day in most joint sittings. However, the fact that a majority government would dominate most joint sitting does not necessarily mean that the Senate must be politically ineffective in the representation or defense of regional interests. As pointed out above, the Senate's political effectiveness in constraining a majority government would be derived from its ability to force additional attention and debate over important legislation and issues.

In response to these proposals, Premier Clyde Wells argued that it was unacceptable that House of Commons legislation could be passed with the approval of only 41 percent of the Senators. Instead, Premier Wells argued that the joint sitting provision should be established as a 50 percent Senate vote. In order to keep the negotiations fluid and prevent deadlock, Ontario's Bob Rae took the initiative by accepting Wells' condition. With these proposals on the table, Canada's First Ministers formally adjourned discussions for the day, only to continue their work into the evening and slowly prepare the framework for an agreement on Senate reform. As Jeffrey Simpson noted, the basic elements of the deal that emerged that evening were that "Québec would get its floor of 25 percent. The Senate's right of an absolute veto would be removed for all but natural-resource legislation. All provinces would get the same number of senators. Larger provinces would get additional Commons seats."[22]

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[21] This assertion is based on calculations using the proposed seat distribution proposed in the July 7th proposal where the Senate representation in a joint-sitting would be 64 seats and the House of Commons would be 335.

This Senate agreement was further refined during the "number crunching" that followed the next day. It was decided that provincial representation in the Senate be reduced from eight to six Senators and that Ontario be granted an additional two Commons seats giving the province 18 new seats in the lower house. The total number of politicians under this reconfiguration would thus remain the same as the present number. Simpson suggested that this was done in anticipation of attacks that "the government of Canada would become larger and more costly."[23] Yet, an additional consequence of reducing the number of Senators was to increase the likelihood that central Canadian interests would not exercise any less influence in the new system as Ontario and Québec would hold a comfortable majority of seats (222 out of 399) in a joint sitting of the two Houses. Although the Senate would not be as effective at blocking or amending disputed legislation through a joint sitting, the ability of the Senate to force a joint sitting by way of a simple majority would encourage, in all likelihood, the federal government to compromise on disputed legislation in order to avoid any excessive impediments to realizing its legislative agenda.

In the Charlottetown accord's legal text, released in early October 1992, additional provisions were included to the Senate package that would affect the Senate's ability to influence the parliamentary schedule. The first stipulated that any dispute between the two Houses would first proceed to a reconciliation committee equally composed between members of the House of Commons and the Senate.[24] Even though the reconciliation committee's recommendations would not be binding on the federal government, the committee's guarantee of up to 30 sitting days to review the legislation combined with an additional 10 sitting days of debate in any joint sitting, extended to the Senate a significant degree of influence over the parliamentary agenda. Furthermore, the Senate's ability to affect the parliamentary schedule would be further strengthened by a second set of provisions in the legal text of the accord. These provisions ensured that the Senate would have the ability to introduce its own legislation.[25] Presumably, the Senate could introduce, or at the very least threaten to introduce, its own prior legislation (of whatever type) as a measure to force concessions on disputed legislation. In this way the Senate would limit further the amount of parliamentary time for the government to initiate its own legislative agenda, since the federal government would be obliged to debate the Senate's legislation fully. Therefore, the combination of these specific features defined a different relationship between the House of Commons and the Senate. In turn, the way in which this relationship between the two houses would evolve, particularly the manner in which the Senators would choose to exercise their powers, would determine the effectiveness of the Senate as a political check on the federal government in the protection of regional interests. Although one cannot predict with any absolute certainty, it does seem reasonable to assume that the Senate would choose to exercise its powers actively, especially since its members would be motivated by and responsible to their own electorate.

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[22] *Globe and Mail*, August 22, 1992: p A 3.
[23] *Globe and Mail*, August 20, 1992: p A 4.

The Senate reform contained in the Charlottetown accord, reflects a compromise between the competing centralist and provincial views of Canadian federalism. Apart from the powers that the Senate would exercise, the electoral requirements and the exchange between guaranteed provincial equality in the Senate and more equitable representation in the House of

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[24] See proposed sections 29 (4) (b), 29 (7), 30 and 31. Government of Canada. (1992) *Meetings on the Constitutional Legal Text Process: Final Draft. Constitution Act, 1867 amendments.* pp. 6-8.

[25] See proposed section 29 (4). Government of Canada, (1992) p. 6.

Commons are proof of this compromise. For example, in the case of the electoral requirements the interests of Québec and the smaller provinces are accommodated by having provisions for both the indirect and direct election of Senators. In the past, no agreement on Senate reform had been accomplished simply because there had been no catalyst powerful enough to force a compromise between these competing definitions of federalism. This was the fundamental difference with the Charlottetown process as additional factors emerged that necessitated a compromise on a federal vision for Canada and paved the way for an agreement on Senate reform. It was illustrated above, that one key factor was the expansion of the constitutional agenda which allowed those government actors who supported Senate reform to link this issue to the other constitutional issues that could not be excluded from any constitutional deal (for example, since Québec's demand for a guaranteed veto over future constitutional changes required unanimous consent, this position gave Alberta the leverage to make a linkage possible). Another vital factor was argued to be the imposition of a deadline for Québec's sovereignty referendum which made reaching some constitutional agreement a political imperative. It is clear from the review of the negotiations that led to the Charlottetown agreement that these two factors, acting in tandem, were enough to compel the governments to accept the fundamental principles of their counterparts' federal visions and fashion a compromise on a new Senate.

However, these factors, in and of themselves, do not adequately explain the guarantee for aboriginal representation in the Senate agreement contained in the Charlottetown legal text. The concessions won by Aboriginal peoples in the Charlottetown accord and the Senate agreement resulted from the legitimacy and support the aboriginal rights movement has achieved in the Canadian public. Since Canadians expected that this round would deal with more than just the demands of Québec, Aboriginal groups were able to use this public expectation to press for a guarantee that there would be provisions for their participation in Canada's new Senate. Although it is unclear how guaranteed aboriginal representation and participation in the newly designed Senate would affect the internal processes of the Senate and the new relationship between the two Houses (since the specific number of aboriginal seats was to be negotiated at a later time), it is certain that this element of the new Senate would provide an opportunity for the introduction and articulation of aboriginal issues in national government.

The Charlottetown Process and the Future of Senate Reform

The process culminating in the Charlottetown accord demonstrated the type and the extremity of conditions that are necessary for agreement in Canada's constitutional reform process. One such condition is that the resolution of individual constitutional issues be linked to the resolution of other important constitutional issues. The linkage of issues is required in order to compel Canada's eleven governments to compromise on their respective definitions of Canadian federalism. The Charlottetown process demonstrated that only when every participant in the constitutional reform process has a stake in the negotiations will there be enough incentive to forge a consensus on the direction of Canada's constitutional reform. It was in this regard that Canada's First Ministers were able to resolve the Senate issue. As indicated above, the fundamental compromises on Senate reform were an exchange between the principle of provincial equality and more equitable representation in the House of Commons and the type of powers that the reformed Senate would exercise. Given this experience, it seems reasonable to assume that there will have to be similar compromises in these areas if any future agreement on Senate reform is to be accomplished in Canada. However, just as the Meech Lake process produced political factors that affected the Charlottetown process, the October referendum produced new conditions that will affect the ability of Canada's constitutional actors to make an effective and acceptable compromise between the two salient views of Canadian federalism in future.

Chapter 5

The Need for a Referendum

> -- Do you agree that the Constitution of Canada should be renewed on the basis of the agreement reached on August 28, 1992? --

Although all eligible voters in every province and territory were asked to answer this question on October 26, 1992, the reasons for a referendum on the Charlottetown accord were different in Québec than in the rest of Canada. In Québec, the expectation of and political pressure for a referendum on the Charlottetown accord can be traced back to Québec's "knife to the throat of the rest of Canada." As already outlined, in January 1991 Robert Bourassa pledged that without an acceptable constitutional package from the rest of Canada his government would hold a referendum on sovereignty. This tactic was intended to pressure the rest of Canada back to the negotiation table in order to deal with Québec's constitutional demands. In this respect, Québec's "knife" was an effective catalyst that prompted the negotiation of a constitutional agreement accepted by Canada's eleven governments. Unfortunately for the government of Québec, like many blades their "knife" was a two edged blade. Even though the provincial government's political and legal commitment to a referendum on sovereignty was instrumental in reaching the constitutional compromise that it supported, that commitment to a referendum created the subsequent political pressure forcing the government to submit the Charlottetown accord to the vote that resulted in the accord's rejection in Québec.

As in Québec, pressure for a vote on the Charlottetown accord were raised in the rest of the provinces. Undoubtedly, this public pressure was an influential factor in the federal government's decision to call a national referendum, but it should not be considered the primary factor in its decision. In large part, the federal decision was determined by its experience with the Meech Lake accord. Despite securing the initial agreement on and support for the Meech Lake accord by all eleven governments, the federal government witnessed its constitutional accord unravel as new political leaders were elected to provincial office and opposed the passage of the accord. In order to prevent the new constitutional accord from sharing a fate similar to its Meech Lake predecessor, the federal government decided to attach a public mandate to the Charlottetown accord. Explicit public approval by a majority in every province and territory would oblige each signatory government to ratify the Accord, regardless of any future changes of political conscience or government leaders. It is this explanation that Prime Minister Mulroney gave to a reporter who queried if the Prime Minister regretted his decision to hold a national referendum. Mr. Mulroney argued: "What was the alternative? . . . You either submit [the Charlottetown Accord] to the people, or you wait for governments to reverse themselves or be thrown out of office and come back in and agree or disagree on constitutional amendments, kind of like, kind of like a melancholy replay of Meech."[1] Ironically, the federal government's desire to guarantee the passage of the constitutional accord led to the accord's ultimate demise.

Nevertheless, while the reasons to hold a referendum on the Constitutional accord might have differed inside and outside of Québec, a majority of Canadians did decide to vote against the Charlottetown accord on

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[1] *Globe and Mail*, October 22, 1992: p. A1.

October 26, 1992. Although this referendum result seems to suggest the existence of a genuine national consensus on Canadian federalism and the Constitution, the contrary can be argued to be true. Under close scrutiny, this referendum debate and the final result demonstrates the significant distance separating the perspectives on Canadian federalism in Québec and the rest of Canada. I will suggest that the most significant effect of the referendum was to polarize public opinion about the Constitution, thereby intensifying the political pressure on future leaders to be more intractable over and aggressive in the pursuit of their respective conception of Canada's federal state and system. Since any constitutional reform agreement depends on the willingness and ability of all of Canada's political leaders to compromise on their own federal conceptions in order to accommodate the other salient definitions of federalism, the resulting public expectation that their political representatives will defend their specific definition of federalism will act as a powerful constraint in the Constitutional reform process, and in turn, on the prospect of any future Senate reform.

To substantiate the conclusion that the referendum has generated a new constraint in Canada's process of Constitutional reform, an overview of the debate on the Charlottetown constitutional agreement is required. What follows illustrates that the existence of multiple definitions of Canadian federalism entrenched in Canadian society fragmented support for this package of constitutional reforms. Specifically, the various opponents of the Charlottetown accord, each expressing a distinct perspective on Canadian federalism, successfully demonstrated to corresponding segments of Canadian society that this package of reforms was unacceptable because it failed to represent those particular group's specific definition of Canadian federalism. Some Canadians used their votes as a symbolic gesture expressing their displeasure with existing politicians and Canada's economic malaise. These factors contributed to the success of the opponents of the Charlottetown accord, particularly outside of Québec, in undermining the public legitimacy of the Yes side's arguments that this package was an "honorable compromise" between the salient visions of the Canadian federation. Nevertheless, the fragmentation over the definition of federalism was the essential condition for a successful No vote in the referendum. Thus, even though a majority of Canadians rejected this constitutional package on October 26, those Canadians inside and outside Québec did so for different, and in certain cases, contrary reasons.

The Nature of the Debate

After the initial euphoria of reaching a constitutional consensus in August, Canada's honeymoon with the Charlottetown accord quickly ended in frustration as Canadians became inundated with the vociferous opposition that emerged in the few weeks preceding the October 26th referendum. As proponents for the Yes and No forces emerged, disagreement over the accord came to revolve around two principal issues. The first area of debate involved the practical effects that the proposed constitutional reforms would have on our federal structure of government and whether this package promoted an acceptable definition of Canadian federalism. Since the opponents of the accord spanned the political and ideological spectrum (for example, from the Reform party and the Parti Québécois to the National Action Committee on the Status of Women and Pierre Elliot Trudeau) no consensus emerged on a preferred definition of federalism or an alternative constitutional package among the No proponents. As a result, Canadians were required to decide on the acceptability of the proposed constitutional reforms by assessing the Charlottetown package, or at least their perception of the package, in relation to the competing definitions of Canadian federalism. Conversely, the other principal area of debate was initiated by the Yes side who attempted to deflect criticism from the contents of the accord by prophesying on the effects that a Yes or No vote would have on Canada's future unity and economic stability. Although these areas of debate are not mutually exclusive, as each area affected the context of discussion in the other, for the sake of expediency each area of concern will be examined separately.

The Effects of Multiple Definitions of Federalism on the Referendum

The absence of a unifying voice and/or critique among the No coalition proved beneficial in the campaign defeating the Charlottetown accord. As alluded to above, the relative disassociation amongst the various No supporters allowed each respective group of No advocates to direct their message to those specific Canadians that identified and associated with that group's respective definition of Canadian federalism. During the referendum campaign, this phenomenon was the most evident in Québec. Outside of Québec, there is a perception among a vast majority of Canadians outside Québec that Quebeckers (specifically Québec Francophones) subscribe to a single nationalist vision. This generalization of Quebeckers is inaccurate as I would suggest that Quebeckers in fact can be placed on a continuum that measures their respective ideological disposition towards Canadian federalism. At one end of this continuum stands the Québec's Separatist vision, while its polarized opposite, the pan-Canadian vision of federalism occupies the other end of the continuum. Only a minority of Quebeckers tend to gravitate to these opposing poles, while the remainder of Quebeckers are distributed along this continuum. Thus, in the referendum campaign the various individuals and organizations arguing for a No vote in Québec did not convince all Quebeckers to agree on Québec's proper relationship with the rest of Canada. Rather, they convinced only those Quebeckers subscribing to their view of federalism that these proposed constitutional reforms did not move Québec closer to the relationship with Canada defined by their respective vision of Québec. It seems that the lack of ideological cohesion, which ranged from ardent sovereigntists and disgruntled federal nationalists to committed pan-Canadian federalists, gave the No side the scope and diversity of perspectives to appeal to a majority of Quebeckers in the October 26 referendum.

The two groups that immediately denounced the Charlottetown accord as a betrayal of Québec's nationalist aspirations were the separatist Parti Québécois and its federal counterpart the Bloc Québécois. Both parties attacked the constitutional accord for not delivering the jurisdictions required to give the province the legislative authority and governmental autonomy necessary to safeguard the survival of the French language and culture in North America.[2] Moreover, Québec separatists argued that the constitutional reforms were, in effect, a retreat from Québec's nationalist vision as the accord would entrench the principle of provincial equality. This principle, they argued, was a clear repudiation of the "Two Nations" vision upon which modern Québec nationalism rests. In turn, this would explicitly prevent Québec from gaining the authority necessary for its political autonomy. Both the Parti Québécois and the Bloc Québécois maintained that a No vote did not categorically mean a vote for Québec's separation from Canada. Despite such assurances, Quebecker's early support for the accord suggests that each party's ideological commitment to Québec's ultimate secession undermined their ability to attract the majority of Quebeckers situated around the centre of the continuum. However, in the subsequent weeks of the debate additional factors emerged to give the No forces the credibility to appeal to a majority of Quebeckers.

One such factor was the September 3rd announcement of Jean Allaire's resignation from the Liberal party and his intention to campaign for a No vote. In his resignation letter, Mr. Allaire declared that the Charlottetown accord "indicates how little regard the other provinces have in accepting a true renewal of federalism."[3] The active participation of an eminent Québec nationalist not committed to the separation of Québec was essential if the No side was to reached beyond the separatist sympathizers and convince a majority of Quebeckers to oppose the accord. Aware of this imperative, Parti Québécois leader Jacque Parizeau convinced Jean Allaire to campaign with the P.Q.[4] in opposition to the accord.

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[2] See Globe *and Mail*, September 5, 1992: p. A2.

[3] As quoted in the *Globe and Mail*, September 3, 1992: p. A1.

[4] It is important to note that Allaire agreed only to align himself with the No forces on the provision that the Parti Quebecois and the Bloc Quebecois acknowledge that his participation was not an indication of his support for or recommendation of Quebec's separation. Allaire's participation on this basis demonstrated to Quebec federalists that one could retain his/her commitment to building Quebec within Canada while rejecting the Charlottetown agreement without advancing the cause of separatism in Quebec.

As discussed in the previous chapter, the Allaire report redefined the Québec Liberal party's traditional federalist vision. The Québec Liberal party adopted as its constitutional platform the report's recommendation that twenty-two areas of Constitutional jurisdiction be transferred to Québec's National Assembly in order to maximize Québec's linguistic, cultural, educational, and economic autonomy. Consequently, Allaire's decision to campaign actively for a No vote seriously fractured the cohesion of the Québec Liberals and its supporters as the youth wing of the party followed Allaire into the No camp. In its critique of the Charlottetown accord, the executive of the Liberal Party's Youth Commission wrote that "Québec risks losing much of its relative weight within the federation. . . . Québec risks becoming marginalized in federal institutions where this vision of equal provinces developed in the rest of Canada since the unilateral repatriation of the Constitution in 1982, could be emphasized even more."[5] Although this is simply a reiteration of the type of arguments made by the Parti Québécois and the Bloc Québécois, the fact that it was made by Québec nationalist supporters of federalism (albeit more nationalist than federalist in their support) enhanced the No side's credibility and appeal among the majority of Quebeckers located between the two poles on the ideological continuum.

The advantage that the No side gained from Quebeckers' fragmentation over Québec's definition of federalism is demonstrated further by former Prime Minister Pierre Elliot Trudeau's impact on the constitutional debate. Trudeau renewed his attack on Québec nationalism in an essay for the September 28, 1992 issue of Maclean's magazine. A week after this initial volley, he launched a scathing critique of the Charlottetown accord at a dinner at La Masion du Egg Roll in Montreal. Unlike his counterparts campaigning for a No vote in Québec, Trudeau argued that the Charlottetown accord was a capitulation to Québec nationalism. Further, he argued the accord would create a hierarchy of rights in Québec in addition to crippling the federal government's national authority. Given the

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[5] As quoted in the *Globe and Mail*, September 9, 1992: p. A2.

preponderance of support for some variation of nationalism in Québec, Trudeau's arguments undoubtedly had little appeal to the majority of Quebeckers, but they did strike a resonant cord with some Quebeckers. Primarily, Trudeau reached those Quebeckers committed to pan-Canadian federalism and those anglophone and allophone Quebeckers who simply feared that the accord would contribute to the erosion of their rights in Québec. For instance, members of Québec's equality party who had originally decided to support the accord decided to vote No on the basis of Trudeau's criticisms of the constitutional package.[6] Given the diversity of opinion over the accord, in all likelihood, the different No supporters would not have been able to win enough support for a No vote independently. Nevertheless, the combined effect of their respective ideological appeal to distinct segments of Québec society contributed to the creation of a majority coalition that resulted in a No victory in the province.

While the fragmentation over the definition of federalism was an essential condition for a successful No vote in Québec, at least four other events contributed to the public legitimacy of the No side in their campaign against the Charlottetown accord. As alluded to above, the first factor was the defection of Jean Allaire, Pierre Elliot Trudeau, and other Québec Liberals to the No camp. This indicated to Quebeckers that one could oppose the accord without necessarily being a Québec separatist. The second event that undermined the legitimacy of the Yes side occurred when the Québec press obtained copies of a recorded conversation between Québec's Deputy Minister of Intergovernmental Affairs Diane Wilhelmy and one of the government's eminent constitutional advisors André Trembly. In this conversation the Québec government is described by these civil servants as having "caved in" and "settled for so little" in the Charlottetown accord.[7] The accord's detractors in Québec, particularly the Parti Québecios, used this recorded conversation in order to attack the Québec government's argument that the accord represented a constitutional victory for Quebeckers. The third event that No supporters such as Parizeau and Bouchard used to substantiate their claims that the accord was a sell-out of Québec's demands was the comments made by British Columbia's Minister of Intergovernmental Affairs. In an October 6th interview with Radio Canada, Moe Sihota argued that Québec Premier Robert Bourassa "lost" on the question of distinct society. In Sihota's words, "[n]ine governments looked him in the eyes and said, No."[8] The final blow that crushed any resurgence of support for the Yes side in Québec was when a series of confidential briefing notes that were prepared for the Québec government's use in the expected negotiations on the administrative agreements entailed by the constitutional accord were leaked to *L'actualité* magazine. "In a detailed analysis of the Charlottetown agreement, provincial officials concluded that it amounts to a repudiation of Québec as one of Canada's founding nations, making sure that Québec is treated as all other provinces with no special status or powers in the renewed federation."[9] In Québec, the cumulative effect of these four events and the fragmentation over the definition of federalism was to strengthen the public legitimacy of the No side's arguments which, I suggest, propelled many Quebeckers to vote against the Charlottetown accord in the October 26th referendum.

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[6] See *Maclean's*, October 5, 1992 (Vol. 105, no. 40): p. 21.
[7] See the *Globe and Mail*, September 16, 1992: p. A 1.

As with the debate in Québec, the diversity of opinion over the proper definition of Canadian federalism in the rest of Canada allowed each respective group of No supporters to direct their message to those Canadians who shared that group's respective definition of Canadian federalism. For instance, the Reform Party was able to maximize it efforts at creating a No opinion in Western Canada by arguing that the reforms in the accord were an affront to the Western Canadian definition of federalism. The Reform party argued that the Charlottetown accord perpetuated the unequal distribution of political power in Canada.[10] Specifically, they argued that Central Canada would receive substantially increased House of Commons representation (where Québec would be assured at least a minimum 25 per cent representation in the House of Commons) while the proposed counterbalance, the reformed Senate, was designed to be structurally ineffective. In the words of Reform Party leader, Preston Manning, "[t]he difference between a Triple-E Senate and a Senate [as] advocated in this deal is the difference between a bull and a steer -- some vital parts are missing."[11] Additionally, opposition in the rest of Canada was strengthened by Trudeau's criticism of the accord as he appealed to those individuals who supported a pan-Canadian vision of Canada. Trudeau's opposition lent legitimacy to those anglophones and groups outside of Québec wanting to vote against the proposed constitutional reforms. In the words of Preston Manning, "Now, others who take a No position can't be accused of just being anti-Québec."[12] Thus, in both Québec and the rest of Canada support for the No position was increased significantly by the fragmentation over the proper definition of federalism. Specifically, opponents of the accord convinced those Canadians who shared their respective vision of federalism that the accord failed to represent their regional interests. Conversely, their counterparts in the Yes camp were unable to convince a majority of Canadians that this agreement represented an "honorable compromise" that satisfied every individual's and group's constitutional interests.

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[8] See the *Globe and Mail*, October 8, 1992: pp. A 1, A 2.
[9] *Globe and Mail*, October 17, 1992: p. A1.
[10] See Globe *and Mail*, September 3, 1992: pp. A1-A2.

The Debate over the Effects of a Yes or No vote on Canada's Future

As noted above, proponents of the Charlottetown accord attempted to deflect criticism away from the type of federalism proposed in the constitutional reforms by raising questions about the potential consequences that a respective Yes or No vote would have on Canada's future unity and economic stability. Although this debate raged in both Québec and the rest of the nation, it took on a slightly different emphasis in these two areas of the nation. For example, the debate in Québec focused primarily on the political effects that the Charlottetown accord would have in the province, with only a secondary discussion on the accord's economic implications. Conversely, the debate outside of Québec focused almost equally on both the political and economic ramifications of a No vote for the country at large. However, in both Québec and the rest of Canada the proponents of the Charlottetown accord attempted to persuade Canadians to compromise on their respective definition of federalism by portraying the consequences of a No vote as leading to the political and economic collapse of the nation.

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[11] *Maclean's*, October 5, 1992 (Vol. 105, no. 40): p. 15.
[12] *Maclean's*, October 5, 1992 (Vol. 105, no. 40): p. 22.

Turning first to the debate in Québec, many Yes supporters, especially Québec's Premier Robert Bourassa, argued that Québec's acceptance of the accord was integral to the realization of the province's constitutional vision and would contribute to Québec's future economic development and prosperity. Challenging Bourassa to list the accord's economic advantages, Bernard Landry, vice-president of the Parti Québécois, vehemently complained that "Québec has obtained no new economic tools in these pathetic negotiations."[13] Accordingly, the central argument advanced by those Québec nationalists arguing for a No vote, was that the proposed constitutional reforms represented a political defeat for Quebeckers and would do nothing but stifle Québec's nationalist and economic aspirations. In Sherbrooke, Québec, however, Brian Mulroney dramatically challenged this argument when he insisted that Quebeckers risked forfeiting at least 31 substantial constitutional and economic advantages won by their provincial government if they decided to reject the accord. In response to Mulroney's arguments that Quebeckers would "lose out" if they voted No, Québec's No advocates did more than simply discount these arguments as blatant attempts at fear-mongering. Contradicting Mulroney, Parti Québécois leader Lucien Bouchard argued that a No vote would give Québec even greater leverage to wrestle from the rest of Canada all the necessary concessions for the attainment of Québec's nationalist vision in the next round of constitutional reform negotiations.[14]

Outside of Québec, many supporters of the accord argued that a Yes vote throughout every province would assure the end of Canada's constitutional bickering. For instance, in an speech at Osgoode Hall Law School, former Alberta Premier Peter Lougheed argued that "[i]f the Yes vote is there in Québec and across Canada . . . its over. Even if demands are made by minority nationalist forces in Québec or elsewhere, there will not be the tolerance for constitutional matters to be at the front of the national agenda."[15] Alternatively, the rejection of the accord, Yes supporters argued, would serve only to prolong Canada's constitutional impasse since the detractors of the constitutional reforms offered no alternative vision of Canada. Consequently, the message from the Yes side was that a No vote would exacerbate Canada's economic instability as the international economic community would interpret Canada's inability to resolve our constitutional dilemma as the prelude to the eventual political fragmentation of the nation. In its 47-page study, the Royal Bank of Canada said that the political break-up of Canada "would lead to a 16-per-cent drop in Canadians' standard of living by the year 2000, a national jobless rate of 15 per cent, the loss of real income of $4,000 for each Canadian and a migration of more than one million people to the United States."[16] Accordingly, Mulroney maintained that only "[a] Yes vote can reduce uncertainty and increase stability. The acceptance of these proposals will reinvigorate the economy of the nation."[17]

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[13] *Globe and Mail*, September 14, 1992: p. A7.
[14] *Globe and Mail*, September 24, 1992: p. A6.

Contradicting Mulroney, the leaders of the No forces outside of Québec insisted that the demand for further constitutional change would not end with the ratification of the accord. Rather, they argued that it would entrench further discussion over the Constitution as the Charlottetown accord contained over 20 additional matters that would require subsequent intergovernmental negotiation. Hence, proponents of the No side urged Canadians to vote against the accord as the constitutional status quo was a preferable alternative to the political future connected to the constitutional package. In this respect, No supporters such as Preston Manning suggested that a No vote would strengthen Canada's economic future as Canadians would be demanding the imposition of a constitutional moratorium. With such a moratorium established, Manning argued, our leaders would be required to resolve the economic challenges facing Canada, rather than committing the energy of future governments to negotiating the specifics of questionable constitutional reforms.[18] Unfortunately for the Yes side, Prime Minister Mulroney's predictions that rejecting the accord would lead to the political and economic collapse of the nation had the unintended effect of weakening support for a Yes vote. Mulroney's detractors argued that such predictions were nothing more than vulgar attempts at coercing Canadians into supporting the accord. Mulroney critics struck a resonant chord with Canadians outside of Québec who demonstrated a notable anti-federal government/Mulroney sentiment. Presumably, these Canadians used the referendum to register their displeasure with the federal government and the Prime Minister.

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[15] As quoted in the *Globe and Mail*, September 24, 1992: p. A4.
[16] *Globe and Mail*, September 26, 1992: p. A1
[17] As quoted in the *Globe and Mail*, September 24, 1992: p. A4.

After the Referendum: Canada's Future Constitutional Reform

One evident observation drawn from the analysis of the referendum debate is that a majority Canadians throughout the nation were unwilling to accept the assurances of a number of Canada's political leaders that the Charlottetown accord represented an acceptable and equitable compromise between the various competing conceptions of the Canadian nation. According to Thomas J. Courchene, this rejection of the accord represents "the demise of the two-founding-nations/elite accommodation approach to governing the federation."[19] For Courchene the referendum was not only on the specifics of the constitutional accord, but more importantly, it was on the legitimacy of the process that produced the accord itself. The No vote, in Courchene's estimation, demonstrated "that the package was devised within a political environment and conception that had lost all legitimacy for Canadians."[20] Accordingly, Courchene concluded that "the Constitution of Canada now belongs to the people of Canada and it can never be amended without our direct consent, whatever the Constitution may say."[21]

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[18] See *Maclean's*, September 21, 1992 (Vol. 105, no. 38): p.12.

[19] Courchene, Thomas J. "Death of a political era." *Globe and Mail*, October 27, 1992: pp. A1, A4.

[20] Courchene. (1992), p. A4.

[21] Courchene. (1992), p. A1.

Although, Courchene may be correct in his assertion that some Canadians voted No in the October 26th referendum as a protest against the politicians and the system that generated the accord, his conclusion that Canadians have rejected elite accommodation as the basis of Canada's constitutional reform process does not necessarily follow. An alternative interpretation of the referendum result is that a majority of Canadians rejected, not the reform process *per se*, but rather the constitutional vision of the governing elites presently dominating the process. More specifically, a majority of Canadians rejected those elites who negotiated the constitutional agreement, in favor of various other elites who argued that the constitutional agreement failed to represent a particular definition of Canadian federalism. In his argument, Courchene mistakenly assumes that the majority support for the No vote indicates that Canadians uniformly intended to reconstruct Canada's process of constitutional reform in order to assure their direct participation in future constitutional reform. In this respect, he failed to appreciated the different meanings of the No vote inside and outside of Québec.

Since the primary focus of the debate was between the competing definitions of federalism, it is reasonable to suggest that many Canadians decided on the acceptability of the Charlottetown accord by assessing it, or at least their perception of the package, in relation to their own vision of Canadian federalism. Consequently, the No vote demonstrates that a majority of Canadians inside and outside of Québec expressed polarized opinions over the Constitution resulting from their highly rigid and distinct (if not competing) definitions of Canadian federalism. The most immediate consequence resulting from the polarized opinions over the Constitution was to exhaust the patience of many Canadians, particularly Canadians outside of Québec, in dealing with the Constitution. In response to this public sentiment, many of those politicians and leaders who witnessed their effort and work to renew Canadian federalism go unrewarded on October 26 have lost the political will to make another attempt at resolving these issues and have declared what amounts to be a constitutional moratorium. In turn, the cessation of formal discussion on and negotiation over the Constitution effectively prevents any immediate and significant Senate reform from occurring, since such reform depends upon its linkage with the other outstanding constitutional reform issues, as the Charlottetown round demonstrated.

Despite the constitutional fatigue that many Canadians and some of the nation's political leaders may be experiencing, this present constitutional moratorium will not last indefinitely. Québec's referendum result on the Charlottetown accord will lead to political events in that province that will make it almost inevitable that another round of constitutional negotiations will be initiated. This referendum result, rather than signaling a reaffirmation of support for federalism in Québec, strongly illustrates that a substantial majority of Quebeckers are not satisfied with the constitutional status quo. As a result of the manifest and persistent dissatisfaction with Québec's present constitutional arrangement in Canada, Quebeckers will continue to elect politicians at both the federal and provincial level who will press this issue. Moreover, in both the upcoming federal and provincial elections, the presence of a political party committed to Québec's political separation from Canada will keep Canada's abortive attempts to renew federalism in the forefront of Quebeckers' minds. Parties such as the Parti Québécois will argue that the failure of the Charlottetown round (and before that the Meech Lake attempt) demonstrates the un-workability of renewed federalism necessitating at the very least a provincial referendum on Québec's political independence, if not Québec's immediate separation from Canada. Consequently, regardless of which party wins Québec's next provincial election there is a foreseeable probability that there will be a definitive referendum on Québec sovereignty.

If such a referendum is held, there are two possible routes for Canada's constitutional reform. In turn, each route will dramatically affect the future of Senate reform in Canada. Assuming that Quebeckers vote for sovereignty, Canada will be faced with an imminent and dire constitutional crisis. Again, assuming that Canadians in the rest of Canada express a desire to keep Québec in Canada, they would have to place aside their own constitutional issues in order to reach some type of acceptable accommodation with Québec.[22] In such a case, contentious issues for Québec, like Senate reform, could well be excluded in order to increase the possibility of reaching a constitutional package acceptable to Quebeckers. Since such a package would include a unanimity provision for future constitutional reforms, so as to meet Québec's traditional demand for a constitutional veto, Senate reform, especially Triple-E Senate reform would become exceedingly difficult if not almost impossible to achieve in the future.

Assuming now that Quebeckers vote against the sovereignty option in support of renewed federalism, this could initiate a new round of multilateral negotiations on the Constitution. However, because the threat of Québec's separation would be diffused by a No vote in a sovereignty referendum, there would be no political imperative for saving the nation. As a result, leaders in the rest of Canada would be less willing to sacrifice their province's constitutional interests simply to reach an accommodation with Québec. Furthermore, the referendum result on the Charlottetown accord intensified the political pressure on future leaders to be more intractable over and aggressive in the pursuit of their respective conception of Canada's federal state and system. Since any constitutional reform agreement depends on the willingness and ability of Canada's political leaders to compromise on their own federal conceptions in order to accommodate the other salient definitions of federalism, the resulting public expectation that their political representatives will defend their specific definition of federalism, especially assuming that the sovereignty option was defeated in Québec, will act as a powerful constraint affecting the prospect of any future Senate reform.

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[22] Unlike the Charlottetown round where Robert Bourassa was compelled to deal with his counterparts constitutional demands because he wanted to avoid a referendum on the sovereignty issue, a Québec government in this scenario could reject any qualified acceptance of its demands given its public mandate to separate from Canada. Likewise, even assuming a Québec government sympathetic to the federal option, any insistence to link issues by the rest of Canada would force a compromise package leaving that package vulnerable to the same types of attacks that Charlottetown accord was subjected to during the referendum. As this last round constitutional reform demonstrated, this would increase the likelihood that Quebeckers would reject such a package being in favor of advancing with the sovereignty option.

The Prospect for Senate Reform: Conclusions and Observations

From the early years after Confederation there has been a persistent demand for upper chamber reform in Canada. Although Senate reformers agree that Canada's Senate is in desperate need of reform, there is no consensus on what type of reform should be adopted for the Senate. The multiple reform proposals that have emerge over the decades indicates that the motivation of each Senate reform proponent is defined by the specific goals that they hope to achieve through a newly designed upper chamber. In this respect, it was argued that most Senate reform models propose to either strengthen the interests and authority of the provincial governments or protect the interests and authority of the federal government. Furthermore, since these two competing models of Senate reform are grounded in highly entrenched regional definitions of Canadian federalism it has been impossible to reach any Senate reform agreement. This inability to reach a consensus on acceptable Senate reform persisted until additional factors emerged in Canada's constitutional negotiation process which resulted in the most comprehensive Senate reform package since Confederation.

These new factors were demonstrated to be direct political consequences resulting from Canada's experience with the Meech Lake process. The first was the prevailing public expectation that the post-Meech Lake round would be expanded to deal with more than just Québec's concerns, specifically other constitutional issues such as Senate reform and aboriginal self-government. That this constitutional round dealt with a more comprehensive list of issues was a consequence of the unanimity provision in the amending formula which allowed governments to link the resolution of one issue to other issues. It was in this respect that the Alberta government, led by Premier Don Getty and supported by Newfoundland Premier Clyde Wells, was able to press the Senate reform cause in this round of constitutional negotiations. Likewise, Aboriginal peoples were able to use the public expectation that this round would be more comprehensive than the Meech Lake round to press for guaranteed representation in the Senate. The other factor, emanating out of Québec, was the imposition of a deadline on top of a renewed possibility of Québec separation. This placed the nation's leaders under enormous political pressure creating the perception that a constitutional compromise was a political imperative. These political realities acted as the essential factors that influenced the behaviour of the participants and determined the outcome of the negotiations that led to Charlottetown and the specific nature of the agreement on Senate reform.

Just as much as the Charlottetown accord demonstrates that the political participants in Canada's constitutional reform process were able to compromise on their respective perspectives on Canadian federalism, the referendum on the accord demonstrates the significant distance separating the perspectives on Canadian federalism in Québec and the rest of Canada. I have suggested that this polarized opinion over Canadian federalism in these respective regions of the country will lead to new political constraints on the participants in Canada's constitutional reform process. Specifically, the referendum clearly indicates that Canadians in Québec and the rest of Canada expect that their political representatives will defend their specific definition of federalism regardless of the prophesied consequences. If this is the correct assessment of the future political climate in relation to Canada's future constitutional reform, the future of Senate reform is uncertain at best. This is especially true since advocates of Triple-E Senate reform lost one of its central spokespersons with the retirement of Don Getty. Without the support of a powerful actor in the reform process, Triple-E Senate reform runs the risk of becoming excluded from any future constitutional negotiation agenda. Even if Newfoundland's Clyde Wells or another provincial premier chooses to champion Triple-E Senate reform, the political leaders from Canada's two most populous provinces will be under significant public pressure to resist such a reform since it implicitly challenges their respective views of Canadian federalism. Although Senate reform can be achieved under the present constitutional amending formula with the approval of seven provinces with fifty per cent of the population (meaning the exclusion of either Ontario or Québec), the expected sovereignty referendum in Québec will force Senate reform down one of two roads described above. As suggested above, each of these two roads will present significant, if not insurmountable, obstacles to any meaningful reform of the Senate in Canada's near future.

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